

Proof of Evidence of Ben Pycroft BA(Hons), Dip TP, MRTPI in relation to Housing Land Supply

For Richborough Estates, Lone Star Land Ltd, K and S Holford, A and S Dean, N P Giles and A L C Broadberry | 23-47

Residential development of up to 230 dwellings at OS Parcel 1570 adjoining and west of Chilgrove Drive and north of Camp Road, Heyford Park (LPA refs: 21/04289/OUT and 23/00089/REF, PINS ref: APP/C3105/W/23/3326761)

Project: 23-472

Site Address: OS Parcel 1570 adjoining and west of Chilgrove Drive and north of Camp Road,
Heyford Park

Client: Richborough Estates, Lone Star Land Ltd, K and S Holford, A and S Dean, N P Giles
and A L C Broadberry

Date: 06 November 2023

Author: Ben Pycroft

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1. Introduction

- 1.1 This proof of evidence is submitted on behalf of Richborough Estates, Lone Star Land Ltd, K and S Holford, A and S Dean, N P Giles and A L C Broadberry (i.e. the Appellants) in support of their appeal against the failure of Cherwell District Council to determine within the relevant timescales an outline planning application for:

“the erection of up to 230 dwellings, creation of new vehicular access from Camp Road and all associated works with all matters reserved apart from Access”

at OS Parcel 1570 adjoining and west of Chilgrove Drive and adjoining and north of Camp Road, Heyford Park (LPA refs: 21/04289/OUT and 23/00089/REF, PINS ref: APP/C3105/W/23/3326761).

- 1.2 This proof of evidence addresses matters relating to the Council’s five year housing land supply (5YHLS). It should be read alongside the proof of evidence of David Bainbridge, which addresses all other planning matters in relation to this case.
- 1.3 I have addressed the Council’s 5YHLS within the context of the current Framework. Should a revised Framework be published prior to the determination of the appeal, then I respectfully request the opportunity to submit further evidence in relation to 5YHLS on behalf of the Appellants.
- 1.4 The base date of the Council’s current 5YHLS position is 1st April 2022. At the Case Management Conference (CMC) on 4th October 2023, the Council explained that it was working on a new 5YHLS position statement (base date 1st April 2023) but it was unlikely that this would be available until early 2024. The Council has not shared any of the information in relation to the draft Housing Land Supply Statement (HLSS) with the Appellant. I asked the Council for the completions data over the period 2022-23, but it declined to provide that information to me. Should the Council produce a new 5YHLS position statement before the appeal is determined then I respectfully request the opportunity to comment on it on behalf of the Appellants.

Qualifications

- 1.5 I am Benjamin Michael Pycroft. I have a B.A. (Hons) and a postgraduate diploma in Town Planning from the University of Newcastle-upon-Tyne and am a member of the Royal Town Planning Institute. I am a Director of Emery Planning, based in Macclesfield, Cheshire.
- 1.6 I have extensive experience in dealing with housing supply matters and have prepared and presented evidence relating to five year housing land supply calculations at several Local Plan examinations and over 50 public inquiries across the country.



- 1.7 I understand my duty to the inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct and comprise my true professional opinions which are expressed irrespective of by whom I am instructed.
- 1.8 I provide this proof of evidence, a summary proof of evidence and a set of appendices. I also refer to several core documents and the Statement of Common Ground (SoCG) in relation to housing land supply.

Background

- 1.9 Until it published its Housing Land Supply Statement (HLSS)¹ in February 2023, the Council accepted that it could not demonstrate a 5YHLS by a significant margin. The 2021 Authority Monitoring Report (AMR)² explained that the 5YHLS at 1st April 2021 was 5,826 dwellings, which against the adopted housing requirement (for Cherwell without including any of Oxford's unmet needs) of 1,142 dwellings per annum, the shortfall against this figure since the base date of the plan period and a 5% buffer equated to 3.8 years. It projected that at 1st April 2022 the deliverable supply would be 5,460 dwellings (3.5 years). As a result, the Council accepted that the tilted balance to the presumption in favour of sustainable development as set out in paragraph 11d of the Framework applies.
- 1.10 The position at 1st April 2021 AMR followed the acceptance by the Council at 1st April 2019 and 1st April 2020 that it could not demonstrate a 5YHLS in those years either. Indeed, at 1st April 2018, the Council claimed it could demonstrate a deliverable supply of 5.0 years (a surplus of just 14 dwellings). Housing delivery and supply have been significantly lower than that expected in the Cherwell Local Plan 2011 – 31 Part 1 (adopted 2015)³.
- 1.11 In February 2023, the Council then produced a new HLSS, which claims that the deliverable supply at 1st April 2022 in Cherwell (excluding sites allocated in the Partial Review to meet Oxford's unmet needs) is 4,244 dwellings. Whilst this is significantly lower than the claimed supply at 1st April 2021 and the projected supply at 1st April 2022 as set out in the 2021 AMR, the HLSS claims this equates to 5.4 years. This is because the HLSS assessed its housing land supply against the local housing need figure, which is

¹ Core document **I1**

² Core document **I6**

³ Please see section 3 of my proof of evidence.



significantly lower than the plan-led housing requirement of 1,142 dwellings per annum. The HLSS explains the local housing need at 1st April 2022 is 742 dwellings per annum⁴.

- 1.12 In addition, the HLSS provides a separate calculation of the deliverable supply from 6 sites allocated in the Partial Review against the adopted housing requirement to meet Oxford’s unmet housing need in Cherwell. At 1st April 2022, the Council claims that this equates to just 0.2 years against the stepped requirement plus shortfall and a 5% buffer. This position was significantly worse than that set out in the 2021 AMR, which also provided a separate calculation for Oxford’s unmet housing need which equated to 3.3 years at 1st April 2021 and predicted 3.5 years at 1st April 2022. Again, housing delivery and supply have been significantly lower than expected in the Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford’s Unmet Housing Need⁵.
- 1.13 For the avoidance of doubt, the HLSS is not an “Annual position statement” as defined in the Annex to the Framework on page 65. The Council’s approach to its 5YHLS has not been “confirmed” by either of the routes to do so as set out in paragraph 75 of the Framework.
- 1.14 In May 2023, evidence was exchanged in relation to an appeal made by Firethorn Developments Ltd against the decision of Cherwell District Council failure to determine within the relevant timescales an outline planning application for up to 530 dwellings at land north west of Bicester, Charlotte Avenue, Bicester⁶. As part of its case, the Appellant challenged the Council’s 5YHLS in relation to the deliverable supply and the Council’s approach in providing two separate calculations (one for Cherwell and one for Oxford’s unmet housing need). Evidence on 5YHLS was submitted by both the Appellant in that case and the Council.
- 1.15 The Council explained that had it determined the appeal application within the prescribed period, it would have refused permission for five putative reasons. However, prior to the opening of the Inquiry on 6th June 2023, the Council confirmed that it no longer wished to defend any of the putative reasons for refusal. The main parties agreed that for the purposes of that appeal, the Council could demonstrate a 5YHLS and the Inspector found no reason to take an alternative view⁷. The submitted 5YHLS evidence was therefore not tested at that public inquiry, and the appeal was allowed on 25th July 2023. Nevertheless, I refer to the Council’s submitted evidence for that appeal in this proof of evidence.
- 1.16 There are several current appeals where the Council’s 5YHLS has been challenged:

⁴ The Council has subsequently changed its position and considers the local housing need at 1st April 2022 is now 710 dwellings per annum as I discuss in section 6 of my proof of evidence

⁵ Please refer to section 3 of my proof of evidence

⁶ PINS ref: 3315849 – 25th July 2023 – core document **M17**

⁷ Please see paragraph 128 of the appeal decision



- Hayfield Homes’ appeal at land north of Banbury Road, Finmere (PINS ref: 3309489) – a hearing took place on 17th October 2023. I was not involved. I understand that at the hearing the Appellant concluded that the Council could demonstrate a 5.03 year supply. In doing so, it did not challenge either the local housing need figure or whether Oxford’s unmet housing need should be included in the calculation;
- Stoic Roofing and Construction and Abbeymill Homes’ appeal at land to the rear of no.12 and south of the dismantled railway, Heath Close, Milcombe (PINS ref: 3325113) – a hearing took place on 18th October 2023. I gave the evidence on behalf of the Appellant in that case in relation to 5YHLS and refer to the 5YHLS evidence presented by the Council at the hearing in my proof of evidence;
- Abbeymill Homes’ appeal at land adjacent to Wise Crescent, Fringford (PINS ref: 3324251) – a hearing is due to take place on 25th and 26th October 2023. I have provided the evidence on behalf of the Appellant in that case ;
- Rainier Development’s appeal at Hempton Road, Deddington (PINS ref: 3324704) – a hearing is due to take place on 14th November 2023;
- Archstone Ambrosden Ltd, Bellway Homes Ltd and Rosemary May’s appeal at land east of Ploughley Road, Ambrosden (PINS ref: 3327213) – a public inquiry is due to open on 22nd November 2023; and
- Deeley Homes’ appeal at land north of Ells Lane, Bloxham (PINS ref: 3327581) – a hearing is due to take place on 6th December 2023.

Summary

The Council’s case on 5YHLS

1.17 As set out in the HLSS, the Council provides two calculations in terms of its 5YHLS:

- One calculation for Cherwell. This includes the sites in Cherwell (excluding those allocated in the Partial Review to meet Oxford’s unmet housing need) against the local housing need for Cherwell and a 5% buffer; and
- A separate calculation for Oxford’s unmet housing need. This includes the deliverable supply of sites allocated in the Partial Review to meet Oxford’s unmet housing needs against the housing requirement set out in the Partial Review, the shortfall against that requirement since 1st April 2021 and a 5% buffer.

1.18 In doing so, the Council refers to policy PR12a of the Partial Review: *“Delivering Sites and Maintaining Housing Supply”*, which states *“The Council will manage the supply of housing land for the purpose of*



*constructing 4,400 homes to meet Oxford's needs. A separate five year housing land supply will be maintained for meeting Oxford's needs"*⁸.

1.19 For the calculation for Cherwell (excluding Oxford's unmet housing need), the Council's position has changed from that set out in the HLSS for two reasons:

- Firstly, the Council now considers the local housing need in Cherwell at 1st April 2022 (excluding Oxford's Unmet Housing Need) is 710 dwellings per annum rather than 742 dwellings as set out in the HLSS; and
- Secondly, the Council now considers that the deliverable supply in Cherwell (excluding the sites allocated in the Partial Review to meet Oxford's Unmet Housing Need) at 1st April 2022 is 4,008 dwellings rather than 4,244 dwellings as set out in the HLSS.

1.20 Consequently, the Council now considers that the 5YHLS in Cherwell (excluding Oxford's unmet housing need) at 1st April 2022 is 5.37 years.

1.21 The Council's position in relation to the deliverable supply of the Partial Review to meet Oxford's unmet housing need has not changed from that set out in the HLSS. It maintains that the 5YHLS for Oxford's Unmet Housing Need is just 0.2 years.

1.22 The Council's position is set out in the following table.

⁸ Please see paragraphs 6.13 to 6.22 of the Council's Statement of Case



Table 1.1 – Cherwell Council’s Claimed 5YHLS Positions at 1st April 2022

| | | Council’s position as set out in the HLSS for Cherwell excluding Oxford’s Unmet Housing Need | Council’s revised position for Cherwell excluding Oxford’s Unmet Housing Need | Council’s position on Oxford’s Unmet Housing Need |
|---|---|--|---|---|
| | Requirement | | | |
| A | Annual requirement | 742 | 710 | 380 ⁹ |
| B | Undersupply to be addressed in 5YHLS period | 0 | 0 | 340 |
| C | Total 5YHLS requirement (A X 5 + B) | 3,710 | 3,550 | 2,240 |
| D | Total 5YHLS requirement plus 5% buffer | 3,896 | 3,728 | 2,352 |
| E | Annual requirement plus 5% buffer | 779 | 746 | 470 |
| | Supply | | | |
| F | Claimed supply (as set out in HLSS) | 4,244 | 4,008 | 80 |
| G | Supply in years (F / E) | 5.45 | 5.37 | 0.17 |
| H | Over / under supply (F – D) | 348 | 280 | -2,272 |

1.23 As explained in paragraph 3.1 of its statement of case, the Council does not consider that the tilted balance to the presumption in favour of sustainable development set out in paragraph 11d) of the Framework applies.

1.24 The Council’s Statement of Case does not refer to the tilted balance being engaged due to the absence of a 5YHLS for Oxford’s unmet housing need.

⁹ i.e. 340 dwellings per annum 2022-26 and 540 dwellings per annum in 2026/27 = 1,900 / 5 = 380



The Appellants' Case on 5YHLS

- 1.25 My proof of evidence demonstrates the following.
- 1.26 Firstly, both the Cherwell Local Plan 2011 – 31 Part 1 and the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford's Unmet Housing Need have significantly failed and will fail to deliver the number of homes required over the period 2011 to 2031. Even on the Council's figures in its trajectories set out in the HLSS¹⁰, there will be a shortfall of housing against the housing requirement set out in the Cherwell Local Plan of 2,657 dwellings by 2031. In addition to this, there will be a shortfall of 2,440 dwellings against the requirement set out in the Partial Review for Oxford's unmet housing need by 2031. Therefore, on the Council's figures there will be a very significant shortfall against the adopted housing requirement of the Local Plan as a whole of **5,097 dwellings**.
- 1.27 Secondly, the local housing need in Cherwell at 1st April 2022 is **742 dwellings per annum**. Whilst it has not updated its HLSS, the Council claims that the local housing need at 1st April 2022 is now 710 dwellings per annum because it uses the annual household growth over the 10-year period starting in 2023 rather than 2022 and the affordability ratio published in March 2023 rather than that published in March 2022.
- 1.28 However, the base date for the 5YHLS calculation is agreed as 1st April 2022. This is the date that both the requirement and supply should relate. Paragraph 74 of the Framework requires the Council to identify both the deliverable supply and (in this case) the local housing need, which the supply is to be assessed against. The Framework does not support an approach where the local housing need is updated but the deliverable supply is not. In addition, the use of the affordability ratio published in March 2023 would result in a skewed assessment. This is because the housing completions between 1st April 2022 and the end of September 2022 influenced the affordability ratio published in March 2023 and therefore the supply in 2022/23 will be included in both the supply and will have influenced the need.
- 1.29 I refer to three recent appeal decisions in Malvern Hills which considered this issue in detail and concluded that consistency is required between the need and supply and the application of the March 2023 affordability ratio to a 5YHLS position at 1st April 2022 would result in an unbalanced assessment¹¹.
- 1.30 The consequence of applying the local housing need figure of 742 dwellings per annum means that the Council's supply figures equate to 5.15 years in Cherwell (excluding Oxford's unmet housing need) and 0.2 years for Oxford's Unmet Housing Need¹².

¹⁰ Core document **I1** – pages 11 to 20 (Cherwell) and page 21 (Oxford's unmet housing need)

¹¹ Core documents **M21** (paragraphs 36 to 42), **M22** (paragraphs 21 to 30) and **M23** (paragraph 51)

¹² Please see Table A in appendix **EP1**



- 1.31 Thirdly, the Council’s approach of providing separate 5YHLS calculations is inconsistent with the 2023 Framework. It is the Framework which sets out what a 5YHLS is, how it should be calculated and what the consequences of failing to demonstrate one are.
- 1.32 The Cherwell Local Plan 2011 – 31 Part 1 and the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need were both adopted under the 2012 Framework. Paragraph 47 of the (archived) 2012 version of the Framework explained that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their “*housing requirements*” (plural).
- 1.33 The 2023 Framework and associated guidance in the PPG do not set out that there should be separate 5YHLS calculations as the Council proposes; one for the need of an area and one for the unmet need of a neighbouring authority. Instead, paragraphs 61 and 66 of the Framework require local planning authorities to identify “*a housing requirement for their whole area*” which includes the local housing need using the standard method set out in the PPG. In addition to the local housing need, 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. This is also reflected in the associated guidance at paragraph 2a-010 of the PPG¹³. This policy was not included in the 2012 version of the Framework.
- 1.34 Paragraph 74 of the 2023 Framework then sets out the minimum requirement for Local Planning Authorities to demonstrate a 5YHLS against their “*housing requirement*” set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old. Further guidance is included in the PPG. Paragraphs 68-001¹⁴, 68-002¹⁵ and 68-003¹⁶ refer to the 5YHLS being a calculation against “*the planned housing requirement*”, “*a housing requirement*” and “*the housing requirement*”.
- 1.35 The 2023 Framework therefore clearly envisages one housing requirement which includes the local housing need for the area and any unmet need from neighbouring areas and it is this figure which the 5YHLS should be measured against.

¹³ Paragraph: 010 Reference ID: 2a-010-20201216: “*When might it be appropriate to plan for a higher housing need figure than the standard method indicates?*”

¹⁴ Paragraph: 001 Reference ID: 68-001-20190722: “*What policies are in place to encourage local authorities to promote a sufficient supply of land for housing and support delivery?*”

¹⁵ Paragraph: 002 Reference ID: 68-002-20190722: “*What is a 5 year land supply?*”

¹⁶ Paragraph: 003 Reference ID: 68-003-20190722: “*What is the purpose of the 5 year housing land supply?*”



- 1.36 It is of note that the approach of a single housing requirement which comprises the need for the area and Oxford's unmet housing need is taken in the South Oxfordshire Local Plan. This plan was examined and adopted under the current wording of the Framework¹⁷.
- 1.37 Similarly, Cherwell itself proposes to abandon its approach to separate housing requirements and 5YHLS calculations in its emerging Local Plan. The Local Plan Review (Regulation 18) version which was consulted on between September and November 2023¹⁸ proposes a single housing requirement which includes the need for Cherwell and Oxford's unmet housing need. Paragraphs 3.159 and 3.160 of the Local Plan Review (Regulation 18)¹⁹ refer to the same wording as set out in paragraph 61 of the Framework as referred to above.
- 1.38 To be consistent with the current Framework, a single 5YHLS calculation should be made. In this case, the strategic policies of the Cherwell Local Plan 2011 – 31 Part 1 adopted July 2015 (incorporating Policy Bicester 13 re-adopted on 19 December 2016) are more than five years old, have been reviewed and found to require updating. Therefore, the component of the housing requirement which relates to Cherwell's needs should be replaced by the local housing need (of 742 dwellings per annum). However, the policies of the Cherwell Local Plan 2011-31 (Part 1) Partial Review – Oxford's Unmet Housing Need, adopted September 2020 are less than five years old and therefore 380 dwellings²⁰ should be added to the 742 figure. Taking the two components together, the total housing requirement for the district for the purposes of the 5YHLS calculation is 1,122 dwellings per annum²¹.
- 1.39 The same approach is used in Vale of White Horse District Council (Oxfordshire) where the strategic policies in its Part 1 plan are more than five years old, have been reviewed and found to require updating but the strategic policies in its Part 2 plan, which relate to Oxford's unmet housing need are less than five years old. As a result, Vale of White Horse calculate their 5YHLS against the total housing requirement for the district comprising of the local housing need for Vale of White Horse and Oxford's Unmet Housing Need. This approach was found to be appropriate by Inspector Jonathan Bore in the land east of Grove, Grove decision²².
- 1.40 This approach is also consistent with the way the Government measures housing delivery in Cherwell through the Housing Delivery Test (HDT). The HDT was introduced in the 2018 Framework and was

¹⁷ The wording of paragraphs 61, 66 and 74 in the 2023 Framework are the same as that used in paragraphs 60, 65 and 73 of the 2018 Framework, which the South Oxfordshire Local Plan was examined under.

¹⁸ Core document **H1**

¹⁹ Page 72 of core document **H1**

²⁰ i.e. 340 dwellings per annum 2022-26 and 540 dwellings per annum in 2026/27 = $1,900 / 5 = 380$

²¹ i.e. $742 + 380 = 1,122$

²² PINS ref: 3310788 – 13th March 2023 – core document **M40**



therefore not considered in the examination of the Cherwell Local Plan Part 1 or the Partial Review. The HDT measures housing completions in Cherwell against a single housing requirement comprising of the minimum annual local housing need figure and Oxford's Unmet Housing Need. There is no separate HDT result for Oxford's Unmet Housing Need.

1.41 The same approach used in the HDT should also be taken with the 5YHLS. This is because whilst the HDT looks at past delivery and the 5YHLS looks at future supply, the two are intrinsically linked. The outcome of the HDT result determines which buffer should apply as part of the 5YHLS calculation. In accordance with paragraph 74 and footnote 41 of the Framework, if the HDT result is less than 85% then the 20% buffer applies *"to improve the prospect of achieving the planned supply"*. Therefore, as delivery in Cherwell is measured against the local housing need plus Oxford's Unmet Housing Need then *"the planned supply"* should be assessed on the same basis.

1.42 The Council's approach of providing separate 5YHLS calculations is also inconsistent with the Framework because it avoids the consequences of a failure of delivery and supply to meet Oxford's unmet housing need. No dwellings have been delivered on the Partial Review sites and even on the Council's figures, only 80 dwellings are considered deliverable by 31st March 2027 equating to 0.2 years against the requirement, shortfall and a 5% buffer. However, on the Council's case it avoids the following consequences:

- The Council's case is that the tilted balance does not apply because it can demonstrate a deliverable supply of 5.37 years (excluding Oxford's unmet housing need);
- Despite there being no delivery against the requirement to meet Oxford's unmet housing need, the Council avoids the application of the tilted balance through the HDT because housing delivery is measured against a single housing requirement for Cherwell as described above;
- The Council avoids the application of the 20% buffer because the trigger is the HDT result and that is measured against a single housing requirement for Cherwell; and
- The Council avoids the need to prepare a HDT Action Plan in accordance with paragraph 76 of the Framework because despite a lack of delivery and supply to meet Oxford's unmet housing need, the HDT is measured against a single housing requirement for Cherwell.

1.43 For these reasons, a single 5YHLS calculation should be made. The consequence of applying a single 5YHLS calculation is that even on the Council's supply figure, it can only demonstrate a 3.27 year supply²³. The tilted balance to the presumption in favour of sustainable development therefore applies.

1.44 Fourthly, the tilted balance to the presumption in favour of sustainable development applies in any event. Footnote 8 of the Framework explains that the tilted balance to the presumption in favour of sustainable development applies for applications involving the provision of housing in *"situations where the local*

²³ Please see Table B of appendix EP1



planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74)”. On the Council’s case, the local planning authority can only demonstrate a 0.2 year supply against the requirement to meet Oxford’s Unmet Housing Need. Therefore, the presumption in favour of sustainable development is triggered.

- 1.45 The Partial Review allocates 6 sites to meet Oxford’s Unmet Housing Need. It does not define a geographical area where other sites could come forward to address the shortfall in the 5YHLS and there are no reserve sites. There is no windfall allowance. The 6 allocated sites are also surrounded by the Green Belt and the existing urban areas. Consequently, to address the shortfall in the 5YHLS for Oxford’s unmet housing need, sites would need to come forward elsewhere in Cherwell.
- 1.46 Sites elsewhere in Cherwell are capable of meeting Oxford’s need because Oxfordshire operates as one Housing Market Area. This was set out in the 2014 Strategic Housing Market Assessment (SHMA)²⁴ and confirmed in the latest Housing and Economic Needs Assessment (HENA)²⁵. Again, the Local Plan Review identifies a single housing requirement which includes Cherwell’s need and Oxford’s unmet housing need. The supply to meet that requirement is to be provided across the District.
- 1.47 Policy PR12b of the Partial Review: “Sites not allocated in the Partial Review” states that applications for planning permission for the development of sites to meet Oxford’s needs that are not allocated in the Partial Review will not be supported unless the criteria in the policy has been met. The first criterion is that the Council has taken a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply. However, the Council has not made a formal decision to this effect. Therefore, it is unclear how the Council intends to address the significant shortfall in the 5YHLS for Oxford’s unmet housing need.
- 1.48 Finally, I have reviewed the Council’s claimed deliverable supply figures and conclude that 443 dwellings should be removed from the Council’s 4,008 figure for Cherwell because the Council has not provided the “clear evidence” required for their inclusion and therefore these sites are not deliverable. I also conclude that the Council has not provided the “clear evidence” required for the inclusion of any of the Partial Review sites.
- 1.49 My supply figure of 3,565 dwellings against the housing requirement I have identified equates to **2.85 years** as shown in the following table. In any event, my supply figure also results in a shortfall in the 5YHLS against the other possible scenarios, including the Council’s case²⁶.

²⁴ Core document **I3**

²⁵ Core document **H13**

²⁶ Please see Table C of appendix **EP1**



Table 1.2 – 5YHLS in Cherwell at 1st April 2022

| | Local housing need 742 dwellings p.a. plus Oxford's unmet need |
|--------------------------------------|--|
| Annual requirement | 742 + 380 = 1,122 |
| Shortfall | 340 |
| Five year requirement | 5,950 |
| Five year requirement plus 5% buffer | 6,248 |
| Annual requirement plus 5% buffer | 1,250 |
| 5YHLS | 3,565 |
| Years supply | 2.85 |
| Under / oversupply | -2,683 |

1.50 The implication of this is addressed by David Bainbridge.



2. Planning policy context

- 2.1 This section of my proof of evidence sets out the relevant planning policy context, which I refer to later.
- 2.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration. As I explain later in my proof of evidence, it is the Framework which sets out what a 5YHLS is, how it should be measured and the consequences of failing to demonstrate one.

Development plan context

Existing development plan

- 2.3 The development plan comprises the Cherwell Local Plan 2011 – 31 Part 1, adopted July 2015 (incorporating Policy Bicester 13 re-adopted on 19 December 2016)²⁷, the Cherwell Local Plan 2011-31 (Part 1) Partial Review – Oxford’s Unmet Housing Need, adopted September 2020²⁸ and the remaining saved policies of the Cherwell Local Plan 1996²⁹.
- 2.4 David Bainbridge addresses the relevant policies in the adopted Local Plan for the determination of the appeal, whether they are up to date, the weight to be given to the policies and whether the tilted balance to the presumption in favour of sustainable development set out in paragraph 11d) applies.
- 2.5 In terms of 5YHLS, policy BSC 1: “District Wide Housing Distribution” of the Cherwell Local Plan 2011 – 31 Part 1 is relevant. It states:

“Cherwell District will deliver a wide choice of high quality homes by providing for 22,840 additional dwellings between 1 April 2011 and 31 March 2031.”

- 2.6 This equates to an adopted, plan-led housing requirement of 1,142 dwellings per annum. Against this figure, the shortfall and a 5% buffer, even on its supply figure, the Council would only be able to demonstrate a 5YHLS of 2.52 years³⁰.

²⁷ Core document **G1**

²⁸ Core document **G3**

²⁹ Core document **G2**

³⁰ Please see Table D in appendix **EP1**



- 2.7 The housing trajectory set out in page 275 of the Cherwell Local Plan 2011 – 31 Part 1 shows how the Council claimed the 22,840 dwellings would be achieved over the plan period to 2031. As I explain in section 3 of my proof of evidence, there is a very significant shortfall against the housing requirement to 2031. The strategic allocations and spatial strategy have failed and will fail to deliver the housing required by the end of the plan period.
- 2.8 Whilst reference is made in the Cherwell Local Plan 2011 – 31 Part 1 to a “Part 2 plan” which would include development management policies as well as identifying smaller (non-strategic) sites in the urban and rural areas, this plan was not progressed.
- 2.9 Policy BSC 1 became more than five years old in July 2020. However, the Council continued to calculate 5YHLS against the 1,142 figure (plus shortfall) until February 2023 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 BSC 1 to be up to date. This was based on the latest evidence available at that time including the Oxfordshire Strategic Housing Market Assessment (SHMA, 2014). The SHMA identifies Oxfordshire as a Housing Market Area and calculated the objectively assessed housing need for Oxfordshire and each of the authorities within it. The 2020 review found that the adopted requirement was higher than the local housing need and that policy BSC 1 was up to date.
- 2.10 However, in February 2023, another review took place for the purposes of footnote 39 of the Framework³¹. This concluded that policy BSC1 needs updating. This is because a new Housing and Economic Needs Assessment (HENA) was produced in 2022, which found the SHMA out of date. The HENA was commissioned by Cherwell and Oxford City to inform their plans. However, it considers the need across Oxfordshire, including the other Oxfordshire authorities. The second review in Cherwell followed Vale of White Horse’s own review which had found the policy in its plan which includes its housing requirement needed updating. The report to Cherwell’s Executive in February 2023 explained that the Vale of White Horse would measure its 5YHLS against the local housing need for Vale of White Horse plus Oxford’s unmet housing need.
- 2.11 The 1,142 dwellings per annum housing requirement excludes any of Oxford’s unmet housing need. This is because the Cherwell Local Plan 2011 – 31 Part 1 was prepared before it was known whether Oxford could meet all its housing need or if it could not where the unmet need would be addressed. As a result, the Cherwell Local Plan 2011 – 31 Part 1 Inspector proposed a main modification to the supporting text to policy BSC 1 (MM29), as set out in paragraph B.95 of the Cherwell Local Plan 2011 – 31 Part 1, which states:

“Cherwell District Council will continue to work under the ‘Duty to Co-operate’ with all other Oxfordshire Local Authorities on an on-going basis to address the objectively

³¹ Core document **G11**



assessed need for housing across the Oxfordshire Housing Market Area and to meet joint commitments such as the Oxford and Oxfordshire City Deal (2014).

As a first step Cherwell District Council has sought to accommodate the housing need for Cherwell District in full in the Cherwell Local Plan.

Cherwell District Council recognizes that Oxford may not be able to accommodate the whole of its new housing requirement for the 2011-2031 period within its administrative boundary. The urban capacity of Oxford is as yet unconfirmed.

Cherwell District Council will continue to work jointly and proactively with the Oxfordshire local authorities and through the Oxfordshire Growth Board to assess all reasonable spatial options, including the release of brownfield land, the potential for a new settlement and a full strategic review of the boundaries of the Oxford Green Belt. These issues are not for Cherwell to consider in isolation. These options will need to be undertaken in accordance with national policy, national guidance, the Strategic Environmental Assessment (SEA) regulations, and the Habitats Regulations Assessment (HRA) to establish how and where any unmet need might best be accommodated within the Oxfordshire Housing Market Area.

Joint work will need to comprehensively consider how spatial options could be supported by necessary infrastructure to ensure an integrated approach to the delivery of housing, jobs and services. Full public consultation will be central to a ‘sound’ process and outcome. If this joint work reveals that Cherwell and other Districts need to meet additional need”

2.12 By September 2016, it was known that Oxford could not accommodate 14,850 dwellings of its own housing need and this would be apportioned as follows:

- 4,400 dwellings in Cherwell;
- 4,950 dwellings in South Oxfordshire;
- 2,750 dwellings in West Oxfordshire;
- 2,200 dwellings in Vale of White Horse; and
- 550 dwellings in Oxford.

2.13 This triggered a partial review of the Cherwell Local Plan 2011 – 31 Part 1 and the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need (“the Partial Review”) was prepared. The Partial Review explains that it is a “supplement” or “addendum” to the Local Plan Part 1. It is not a separate Local Plan.

2.14 Policy PR1 of the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need: “Achieving Sustainable Development for Oxford’s Needs” states (amongst other things):

“Cherwell District Council will work with Oxford City Council, Oxfordshire County Council, and the developers of allocated sites to deliver:



(a) 4,400 homes to help meet Oxford's unmet housing needs and necessary supporting infrastructure by 2031”

2.15 Policy PR3 of the Partial Review then explains that 6 sites were removed from the Green Belt to meet Oxford’s unmet housing need. These are discussed in subsequent policies:

- PR6a – Land east of Oxford Road (690 dwellings);
- PR6b – Land west of Oxford Road (670 dwellings);
- PR7a – Land south east of Kidlington (430 dwellings);
- PR7b – Land at Stratfield Farm (120 dwellings);
- PR8 – Land east of the A44 (1,950 dwellings); and
- PR9 – Land west of Yarnton (540 dwellings).

2.16 Therefore, the 4,400 dwelling requirement is to be met by these 6 sites. No additional contingency has been included in the Partial Review such as additional allocations or a windfall allowance. There is no defined geographical area for the Partial Review whereby sites other than those allocated in the plan could come forward to meet Oxford’s unmet needs. Any additional sites that could come forward to meet Oxford’s unmet needs (including those which could come forward under policy PR12b) would be outside these allocations and therefore elsewhere in Cherwell.

2.17 It is of note that the areas surrounding the 6 allocated sites in the Partial Review is in the Green Belt. This is shown on the Policies Map at appendix 1 of the Partial Review (pages 157-159).

2.18 The housing trajectory set out in Appendix 3 (page 164) of the Partial Review shows how the Council claimed the 4,400 dwellings would be achieved over the plan period to 2031. As I explain in section 3 of my proof of evidence, as with the Cherwell Local Plan there is a very significant shortfall against the housing requirement to 2031. The Partial Review has failed to deliver the housing required to assist in Oxford’s unmet housing needs by the end of the plan period.

Emerging plan

2.19 The Council recently consulted on the Cherwell Local Plan Review 2040 at regulation 18 stage between September and November 2023³². The consultation version of the Local Plan states the following:

- The current assumption is that Cherwell has a need of 1,009 homes per annum (paragraph 3.170, page 74);

³² Core document H1



- Oxford has a housing need of 1,322 homes per annum. Oxford considers it has the capacity to accommodate 457 homes per annum having regard to its administrative boundaries and constraints. On this basis, the unmet housing need in Oxford is 865 homes per annum (paragraphs 3.170 and 3.171, page 74);
- Using the same percentages used to distribute the unmet need in 2014, Cherwell would accommodate 33% of the unmet need (paragraph 3.172, page 74);
- The overall housing requirement would be 25,860 dwellings (1,293 dwellings per annum) comprising of 1,009 per annum for Cherwell and 284 per annum to assist in meeting Oxford's Unmet Housing Need (table 2, page 74).

2.20 Against the housing requirement set out in the consultation draft Local Plan, the Council cannot demonstrate a 5YHLS even on its own figures. The supply at 1st April 2022 of 4,088 dwellings (i.e. 4,008 + 80) equates to just 2.91 years against the draft housing requirement in the consultation draft Local Plan and a 5% buffer³³.

2.21 Paragraph 3.174 of the consultation draft states:

“The suggested figure of 1,293 homes per annum compares to a current figure 1,362 per annum (1,142 for Cherwell's needs plus an average of 220 per annum for Oxford over 20 years).”

2.22 Table 5 (page 76) of the consultation draft identifies the Council's current assessment of its housing supply including completions over the period 2020-22 and the deliverable and developable supply over the period 2022-2040. This includes the 6 sites allocated in the Partial Review. Table 6 (page 76) of the consultation draft then concludes that 4,654 dwellings are required to meet the remaining draft requirement.

2.23 It is relevant that in the emerging Local Plan, the Council abandons its current approach of providing separate 5YHLS calculations for Cherwell's needs and Oxford's unmet housing need. As I discuss in section 7 of my proof of evidence, this is because the 2023 Framework requires a single housing requirement to be identified which is informed by local housing need and includes unmet needs from neighbouring authorities. The same approach is applied in South Oxfordshire where its plan was examined and adopted under the same wording as the current Framework. The same approach is also applied in West Oxfordshire, although its Local Plan was examined under the 2012 Framework.

2.24 In terms of the direction of travel, it is relevant that whilst the HENA is used to demonstrate that policy BSC1 (which includes the current adopted housing requirement) needs updating, it also found the local housing need generated by the standard method underestimates need in Oxfordshire. It states that an alternative approach to the standard method is therefore justified, resulting in a higher figure (i.e. 1,009 dwellings per annum rather than 742 dwellings per annum). Therefore, on the one hand the Council relies

³³ Please see the calculation shown in table E in appendix EP1



on the findings of the HENA to calculate its 5YHLS against the local housing need but on the other hand the HENA itself found the local housing need underestimates housing need.

Other material considerations

Cherwell Housing Land Supply Statement (HLSS, published February 2023)

- 2.25 The Council's Housing Land Supply Statement was published in February 2023³⁴. It claims that at 1st April 2022, Cherwell had a deliverable five year housing land supply of 4,244 dwellings, which against the local housing need and a 5% buffer equates to a supply of **5.4 years**. It also claims that at 1st April 2022 the 5YHLS for Oxford's unmet needs is just **0.2 years**.
- 2.26 The HLSS lists the large sites that comprise the 4,244 dwelling figure. The small sites (i.e. sites with a capacity of 1 to 9 dwellings) with planning permission have not been identified. The HLSS states that 99 dwellings on small sites in Banbury, 34 dwellings on small sites in Bicester and 185 dwellings on small sites in other areas all had planning permission at the base date.
- 2.27 Following a series of requests to the Council, it only provided me with a list of small sites on the afternoon of 20th October 2023. Consequently I have not had the opportunity to review those sites in detail before the exchange of evidence. Should a review of the small sites reveal further disputed sites, I will set this out in the Statement of Common Ground on housing land supply.

Cherwell Annual Monitoring Report 2021 (published December 2021)

- 2.28 The Council's latest AMR remains that published in 2021 and covers the period 2020-21. I also refer to the previous AMRs as these set out the previous 5YHLS position in Cherwell.

Cherwell Residential Completions & Permissions

- 2.29 The Council provides a list of completions and number of dwellings with planning permission per settlement. This does not provide a breakdown in terms of sites within those settlements. The Council has since provided me a list of completions over the last five years on a site by site basis.

³⁴ Core document I1



National planning policy and guidance

The National Planning Policy Framework (“the Framework”)

2.30 The Framework was published in March 2012. It was revised in July 2018, February 2019, July 2021 and September 2023. The relevant sections of the Framework in relation to my proof of evidence:

- Footnote 8 which explains that the tilted balance to the presumption in favour of sustainable development applies where a local planning authority cannot demonstrate a 5YHLS or where the Housing Delivery Test result is less than 75%;
- Section 5: Delivering a sufficient supply of homes, including:
 - Paragraph 60, which refers to the Government’s objective of significantly boosting the supply of homes;
 - Paragraph 61, which explains that the minimum number of homes needed should be informed by a local housing need calculated using the standard method set out in the PPG;
 - Paragraph 71, in relation to an allowance for windfall sites;
 - Paragraph 74, which explains that the requirement to demonstrate a 5YHLS is a minimum requirement and explains the figure against which the five year housing land supply should be measured;
 - Paragraph 75, which explains the circumstances in which a five year housing land supply can be demonstrated through a recently adopted plan or subsequent annual position statement; and
 - Paragraph 76, in relation to Housing Delivery Test Action Plans; and
- Annex 2: Glossary, including:
 - The definition of “deliverable” on page 67; and
 - The definition of “windfall sites” on page 74.

Planning Practice Guidance (PPG)

2.31 The PPG was first published in March 2014 and has been updated since. The relevant chapters of the PPG in relation to our statement are:

- Chapter 2a - Housing and economic needs assessment;
- Chapter 3 – Housing and economic land availability assessments; and
- Chapter 68 – Housing supply and delivery.



3. Housing delivery in Cherwell

Housing delivery against the plan-led housing requirement

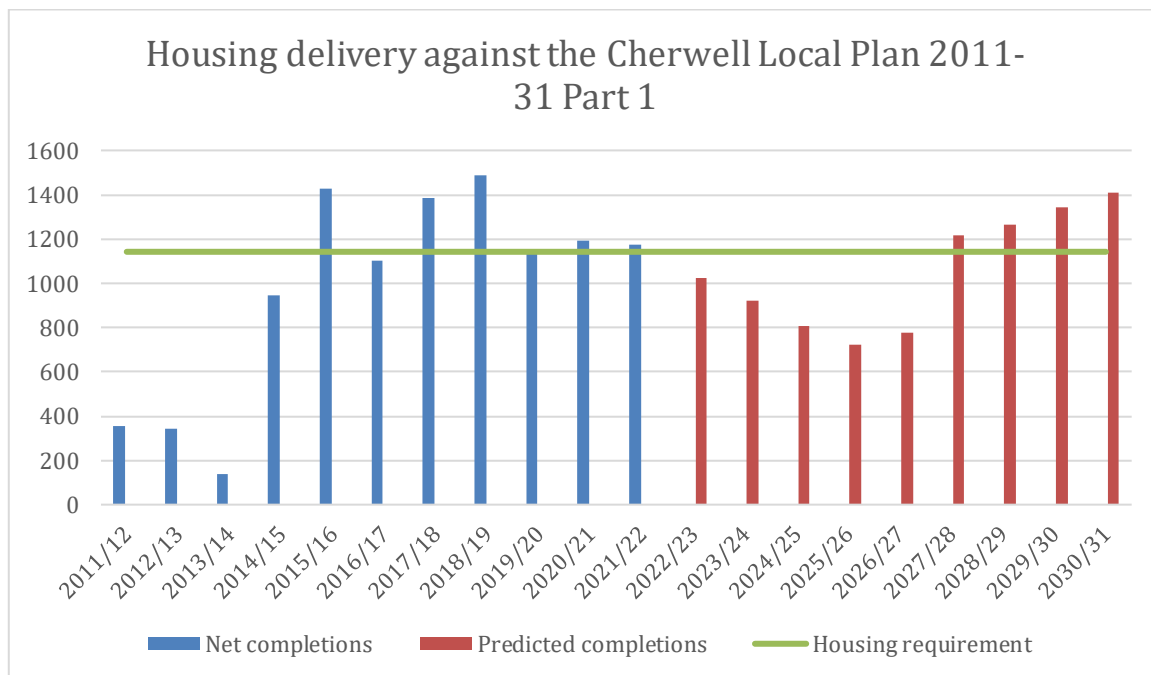
- 3.1 The Cherwell Local Plan 2011 – 31 Part 1 and the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need have significantly failed and will fail to deliver the number of homes required over the period 2011 to 2031.
- 3.2 The Cherwell Local Plan 2011-31 Part 1 sets out a housing requirement of 22,840 dwellings over the period 2011 to 2031. By 1st April 2022, only 10,703 dwellings had been completed against a requirement over the same period of 12,562 dwellings. This has resulted in a significant shortfall of 1,859 dwellings at 1st April 2022. This is shown in the following table.

Table 3.1: Housing delivery in Cherwell since 2011 against the adopted housing requirement

| Year | Requirement (dwellings p.a.) | Completions (net) | Over / under provision | Cumulative |
|----------------|---------------------------------|----------------------|---------------------------|------------|
| 2011/12 | 1,142 | 356 | -786 | -786 |
| 2012/13 | 1,142 | 340 | -802 | -1,588 |
| 2013/14 | 1,142 | 140 | -1,002 | -2,590 |
| 2014/15 | 1,142 | 946 | -196 | -2,786 |
| 2015/16 | 1,142 | 1,425 | 283 | -2,503 |
| 2016/17 | 1,142 | 1,102 | -40 | -2,543 |
| 2017/18 | 1,142 | 1,387 | 245 | -2,298 |
| 2018/19 | 1,142 | 1,489 | 347 | -1,951 |
| 2019/20 | 1,142 | 1,151 | 9 | -1,942 |
| 2020/21 | 1,142 | 1,192 | 50 | -1,892 |
| 2021/22 | 1,142 | 1,175 | 33 | -1,859 |
| Total | 12,562 | 10,703 | -1,859 | |
| Average | 1,142 | 973 | | |



- 3.3 Over the remaining 9 years of the plan period, even by the Council’s own figures set out in the HLSS, it is only predicting 9,480³⁵ dwellings will be delivered. This results in a significant shortfall in the plan period by 2031 of **2,657 dwellings**³⁶.
- 3.4 In addition to this, the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need sets out a housing requirement of 4,400 dwellings over the period 2021 to 2031. By 1st April 2022, **no dwellings** had been completed to meet Oxford’s unmet housing need and none of the 6 allocated sites had planning permission. Indeed, the Council does not consider any homes will be delivered to meet Oxford’s unmet needs until 2026/27 (and only 80 dwellings would be completed in that year). In the plan period to 2031, even by the Council’s own figures, it is only predicting 1,960 dwellings will now be delivered. This results in a significant shortfall in the plan period of **2,440 dwellings**³⁷.
- 3.5 Therefore, on the Council’s figures there will be a very significant shortfall against the adopted housing requirement of the plan as a whole of **5,097 dwellings**.
- 3.6 The significant under delivery of homes in Cherwell is shown in the following charts.

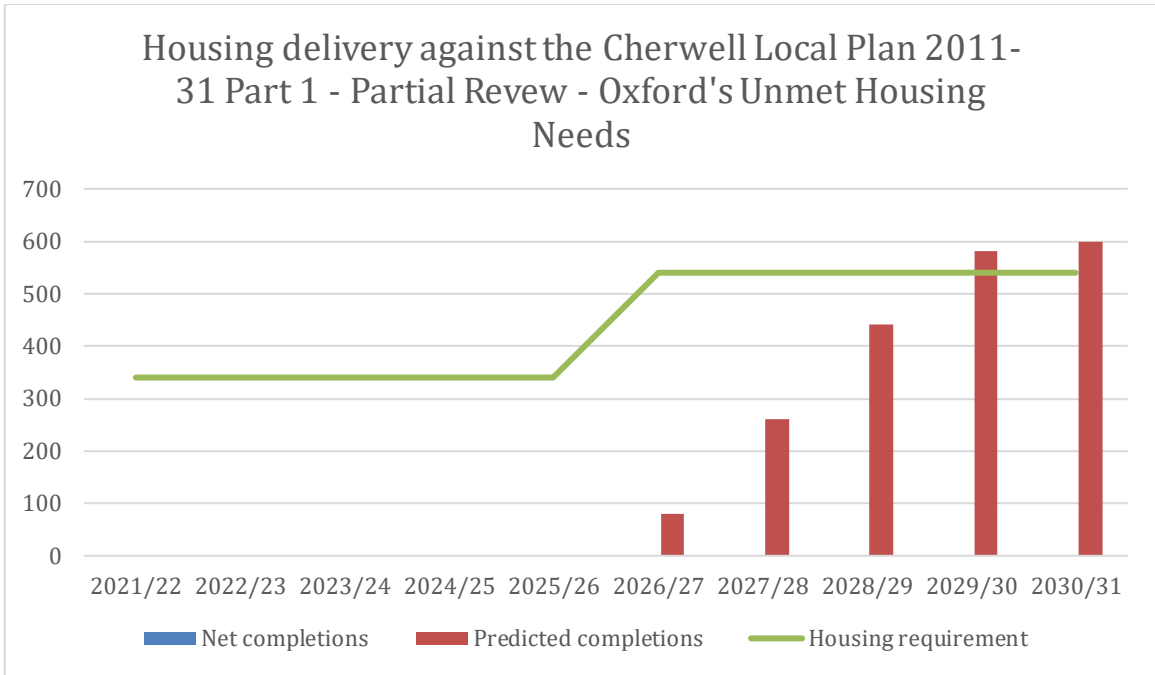


³⁵ i.e. 4,244 dwellings in the 5YHLS period 1st April 2022 to 31st March 2027 and 5,236 dwellings in the period 1st April 2027 to 31st March 2031

³⁶ i.e. 22,480 – 10,703 – 9,480 = 2,657 dwellings

³⁷ i.e. 4,400 – 1,960 = 2,440





3.7 The main reason why the plans have failed to deliver the number of homes required are because the allocations have failed to come forward at the rate predicted in the trajectories in the plans. This is shown in the following tables.



Table 3.2 – Sites allocated in the Cherwell Local Plan 2011-31 Part 1 which the Council no longer claims will complete in the plan period 2011-2031

| Reference | Address | Capacity | Dwellings predicted in plan period in Plan trajectory | Total completions now predicted (plan period) | Difference |
|-------------|--------------------------|---------------|---|---|---------------|
| Bicester 1 | North West Bicester | 3,293 | 3,293 | 1,312 | -1,981 |
| Bicester 2 | Graven Hill | 2,100 | 2,100 | 1,350 | -750 |
| Bicester 12 | South East Bicester | 1,500 | 1,500 | 450 | -1,050 |
| Banbury 1 | Canalside | 700 | 700 | 409 | -291 |
| Banbury 4 | Bankside Phase 2 | 825 | 600 | 350 | -250 |
| Villages 5 | Former RAF Upper Heyford | 2,361 | 2,361 | 1,855 | -506 |
| | | 10,779 | 10,554 | 5,726 | -4,828 |



Table 3.3 – Sites allocated in the Partial Review which the Council no longer claims will complete in the plan period 2011-2031

| Reference | Address | Capacity | Dwellings predicted in plan period | Total completions now predicted (plan period) | Difference |
|-----------|---|--------------|------------------------------------|---|---------------|
| PR6a | Land east of Oxford Road, North Oxford | 690 | 690 | 250 | -440 |
| PR6b | Land west of Oxford Road, North Oxford | 670 | 670 | 280 | -390 |
| PR7a | Land south east of Kidlington, Kidlington | 430 | 430 | 380 | -50 |
| PR7b | Land at Stratfield Farm, Kidlington | 120 | 120 | 120 | 0 |
| PR8 | Land east of the A44, Begbroke | 1,950 | 1,950 | 600 | -1,350 |
| PR9 | Land west of Yarnton, Yarnton | 540 | 540 | 330 | -210 |
| | | 4,400 | 4,400 | 1,960 | -2,440 |



Housing delivery against the housing requirement in the draft Local Plan Review

3.8 The start date of the draft Local Plan Review is 2020. By 1st April 2022, there has already been a shortfall of 219 dwellings against the proposed housing requirement in the draft Local Plan. This is shown in the following table.

Table 3.4 – Completions in Cherwell against the draft Local Plan requirement 2020-22

| Year | Requirement (dwellings p.a.) | Completions (net) | Over / under provision | Cumulative |
|----------------|------------------------------|-------------------|------------------------|-------------|
| 2020/21 | 1,293 | 1,192 | -101 | -101 |
| 2021/22 | 1,293 | 1,175 | -118 | -118 |
| Total | 2,586 | 2,367 | -219 | -219 |
| Average | 1,293 | 1,184 | | |

3.9 Indeed, according to the Council's trajectories in the HLSS, the draft Local Plan requirement of 1,293 dwellings per annum will not be met over the next five years as shown in the following table.



Table 3.5 – Predicted completions in Cherwell against the draft Local Plan requirement 2022-27

| Year | Requirement (dwellings p.a.) | Predicted Completions (net) | Over / under provision |
|----------------|---------------------------------|-----------------------------------|---------------------------|
| 2022/23 | 1,293 | 1,023 | -270 |
| 2023/24 | 1,293 | 919 | -374 |
| 2024/25 | 1,293 | 804 | -489 |
| 2025/26 | 1,293 | 724 | -569 |
| 2026/27 | 1,293 | 854 ³⁸ | -439 |
| Total | 6,465 | 4,324 | -2,141 |
| Average | 1,293 | 865 | |

Housing Delivery Test

3.10 The definition of the Housing Delivery Test (HDT) is provided in the Glossary to the Framework on page 67 as follows:

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

3.11 The HDT Measurement Rule Book (July 2018) explains that HDT is calculated as a percentage of net homes delivered against the “number of homes required”. Paragraph 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

³⁸ 774 dwellings in Cherwell plus 80 dwellings on the Partial Review sites



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” (my emphasis)

3.12 The latest HDT results remain those for 2021, which were published on 14th January 2022. The result for Cherwell is summarised in the table below:

Table 3.6 – Published 2021 Housing Delivery Test Result

| | Housing requirement | | | | Housing delivery | | | | HDT% |
|----------|---------------------|---------|---------|-------|------------------|---------|---------|-------|------|
| | 2018-19 | 2019-20 | 2020-21 | Total | 2018-19 | 2019-20 | 2020-21 | Total | |
| Cherwell | 974 | 881 | 650 | 2,505 | 1,489 | 1,159 | 1,192 | 3,840 | 153% |

3.13 As can be seen in the table above, the Council passed the latest HDT. It is relevant that there is no separate HDT result for the Partial Review. Instead, the Government measures housing delivery in Cherwell against the local housing need for Cherwell (around 750 dwellings per annum) plus the annual average housing requirement of the Partial Review (220 dwellings) Oxford’s unmet needs. This is because as above, the HDT measurement rulebook explains that the lower figure of the local housing need or the adopted housing requirement should be used and (as highlighted above) to this is added the unmet need from Oxford.

3.14 The housing requirement used in the 2021 HDT is as follows:

- 2018-19 - this is the local housing need of 754 dwellings per annum plus 220 dwellings of Oxford’s unmet need³⁹;
- 2019-20 – this is the local housing need of 741 dwellings per annum plus 220 dwellings of Oxford’s unmet need minus 1 month to reflect any impact the Covid-19 pandemic had on build rates in that year; and
- 2020-21 – this is the local housing need of 755 dwellings per annum plus 220 dwellings of Oxford’s unmet need minus 4 months to reflect any impact the Covid-19 pandemic had on build rates in that year.

3.15 The technical note which accompanied the 2021 HDT result states:

³⁹ i.e. 4,400 / 20 years in the plan period = 220 dwellings per annum



“3. Net unmet need is calculated for each authority by summing all the need taken (the authority becomes responsible for delivering this housing) and taking away all need given (the authority is no longer responsible for this housing).

4. To convert this into an annual figure, the number of years the plan covers is calculated by taking the difference between the start date of the plan and the end date of the plan, by classifying both the start date and end date as days the plan covers. The total net unmet need figure by authority is then divided by the total plan period.

5. The annual net unmet need for each authority is then added to local housing need in 2018/19, 2019/20 and 2020/21.” (my emphasis)

3.16 The Council’s own housing trajectories set out in the HLSS indicate that the Council will start to fail the HDT as the delivery of sites in Cherwell and those that are allocated to meet Oxford’s unmet needs are not expected to meet the requirement used in the HDT (of around 960 dwellings per annum)⁴⁰. This is shown in the following table.

Table 3.7 – Predicted completions in Cherwell against the HDT requirement 2022-27

| Year | HDT Requirement (dwellings p.a.) | Predicted Completions (net) | Difference |
|---------|----------------------------------|-----------------------------|------------|
| 2022/23 | 960 | 1,023 | 63 |
| 2023/24 | 960 | 919 | -41 |
| 2024/25 | 960 | 804 | -156 |
| 2025/26 | 960 | 724 | -236 |
| 2026/27 | 960 | 854 ⁴¹ | -106 |

⁴⁰ i.e. around 740 dwellings per annum local housing need and 220 dwellings of Oxford’s unmet housing need

⁴¹ 774 dwellings in Cherwell plus 80 dwellings on the Partial Review sites



4. 5YHLS in Cherwell

4.1 The Cherwell Local Plan 2011-2031 Part 1 was adopted in July 2015. The 5YHLS position since then is summarised below.

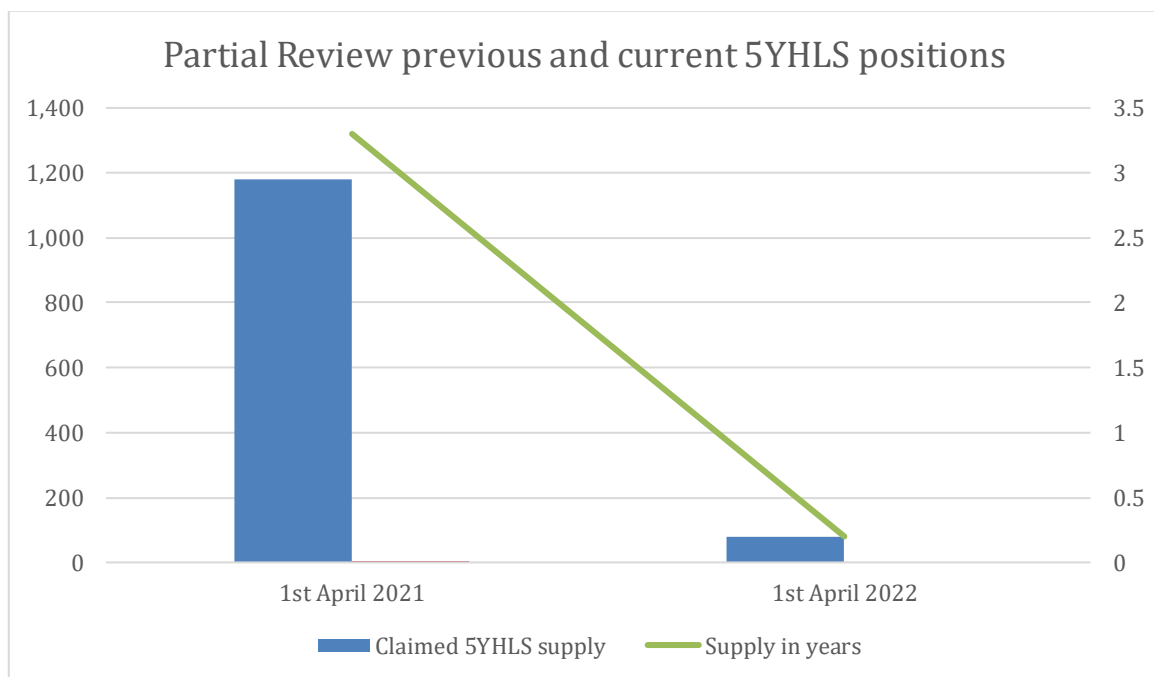
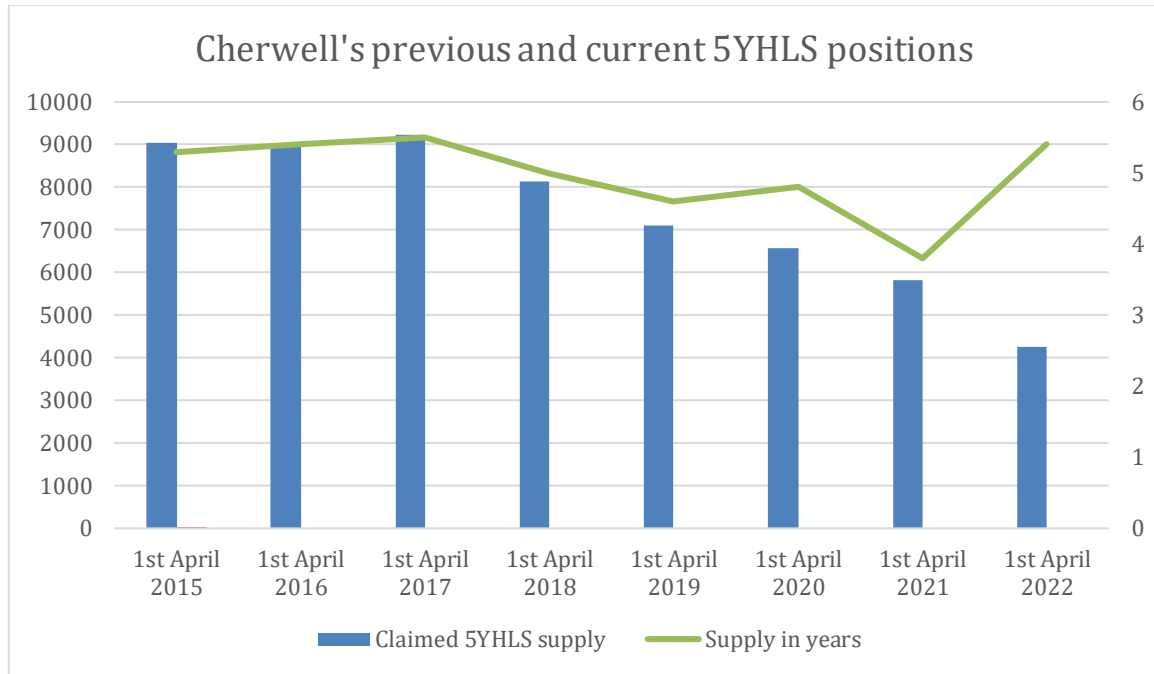
- AMR 2015 (published December 2015) – the Council claimed to have a deliverable supply of 9,034 dwellings at 1st April 2015, which against the adopted housing requirement and shortfall and a 5% buffer equated to 5.3 years;
- AMR 2016 (published March 2017) – the Council claimed to have a deliverable supply of 8,996 dwellings at 1st April 2016, which against the adopted housing requirement and shortfall and a 5% buffer equated to 5.4 years;
- AMR 2017 (published December 2017) – the Council claimed to have a deliverable supply of 9,241 dwellings at 1st April 2017, which against the adopted housing requirement and shortfall and a 5% buffer equated to 5.5 years;
- AMR 2018 (published December 2018) – the Council claimed to have a deliverable supply of 8,139 dwellings at 1st April 2018, which against the adopted housing requirement and shortfall and a 5% buffer equated to 5.0 years;
- AMR 2019 (published December 2019) – the Council claimed to have a deliverable supply of 7,096 dwellings at 1st April 2019, which against the adopted housing requirement and shortfall and a 5% buffer equated to 4.6 years;
- AMR 2020 (published December 2020) – the Council claimed to have a deliverable supply of 6,578 dwellings at 1st April 2020, which against the adopted housing requirement and shortfall and a 5% buffer equated to 4.8 years;
- AMR 2021 (published December 2021) – the Council claimed to have a deliverable supply of 5,826 dwellings, which against the adopted housing requirement and shortfall and a 5% buffer equated to 3.8 years. In addition, the AMR 2021 claimed that the deliverable supply in the Partial Review was 1,180 dwellings, which against the requirement in the Partial Review equated to 3.3 years. This was the first AMR to be published after the Partial Review was adopted and accepted that there was a shortfall in the 5YHLS.
- HLSS (published February 2023) – As explained above, the HLSS claims that the Council has a deliverable supply of 4,244 dwellings, which against the local housing need and a 5% buffer equates to 5.4 years. In addition, the HLSS claims that the deliverable supply in the Partial Review is 80 dwellings, which against the requirement in the Partial Review and shortfall and a 5% buffer equates to 0.2 years.

4.2 It is of note that between 12th September 2018 and 25th March 2021, the tilted balance to the presumption in favour of sustainable development only applied in Cherwell when the 5YHLS was below 3 years. This followed a written ministerial statement in September 2018 which provided this flexibility because of the Oxfordshire Housing Growth Deal and the commitment to provide an Oxfordshire-wide Joint Spatial



Strategy by 2021. However, as this did not happen, the flexibility in terms of the trigger to the tilted balance was removed in March 2021.

4.3 The Council's 5YHLS positions are summarised in the following charts.



5. Matters agreed in relation to 5YHLS

- 5.1 As set out in the Statement of Common Ground on Housing Land Supply, the following matters in relation to 5YHLS are agreed.

The base date and the five year period

- 5.2 The base date is the start date for the five year period for which both the requirement and supply should relate. It is agreed that the relevant base date for assessing the 5YHLS the purposes of this appeal is 1st April 2022 and the relevant 5YHLS period is to 31st March 2027.
- 5.3 As discussed in the introduction to my proof of evidence, at the Case Management Conference (CMC) on 29th September 2023, the Council explained that it was working on a new 5YHLS position statement (base date 1st April 2023) but it was unlikely that this would be available until early 2024. The Council has not shared any of the information in relation to the draft HLSS with the Appellant before the exchange of evidence. I asked the Council for the completions data over the period 2022-23, but it has declined to provide that information to me. The Council will know the completions in 2022-23 as it was required to provide them to Government as part of the Housing Flows Reconciliation (HFR) on DELTA by 3rd October 2023.
- 5.4 Should the Council produce a new 5YHLS position statement before the appeal is determined then I respectfully request the opportunity to comment on it on behalf of the Appellant.

The figure the 5YHLS should be measured against

- 5.5 Paragraph 74 of the Framework states that the five year housing land supply should be measured against the housing requirement set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old. Footnote 39 of the Framework explains that the 5YHLS will continue to be measured against the adopted housing requirement where it is over five years old but it has been reviewed and found not to require updating.
- 5.6 Policy BSC 1 in the adopted development is over five years old and has been reviewed and found to require updating. Therefore, the component of the housing requirement for the 5YHLS calculation relating to Cherwell's need is replaced by the local housing need. However, there is disagreement in relation to what the local housing need was at 1st April 2022 and whether to that should be added the adopted requirement for Oxford's unmet housing need.



The buffer

5.7 It is agreed that the 5% buffer applies.

Amendments to the 5YHLS as set out in the HLSS

5.8 It is agreed that 236 dwellings on the following sites which are included in the HLSS as deliverable should be removed from the 5YHLS:

Table 5.1 – Amendments to the 5YHLS as set out in the HLSS

| LPA ref | Address | Capacity (net) | HLSS 5YHLS | Council 5YHLS | Difference |
|--|---|----------------|------------|---------------|-------------|
| 16/01802/OUT Outline remainder | Graven Hill | 1,095 | 150 | 0 | -150 |
| 20/02345/LDO (expired)20/02345/LDO Local Development Order | Graven Hill | 276 | 265 | 205 | -60 |
| Banbury 5 | North of Hanwell Fields | 5 | 5 | 0 | -5 |
| 18/00487/F | Land to the rear of 7 and 7A High Street | 14 | 14 | 0 | -14 |
| 14/01188/OUT 17/00699/REM 18/01973/REM | Land South of Salt Way and West of Bloxham Road | 343 | 154 | 147 | -7 |
| | | | | | -236 |

5.9 This means that the Council considers it has a deliverable supply of 4,008 dwellings in Cherwell and a deliverable supply of 80 dwellings to meet Oxford's unmet housing need. The Council considers that these



figures equate to 5.37 years in Cherwell (excluding Oxford's unmet housing need) and 0.2 years for Oxford's unmet housing need⁴².

⁴² Please see table 1.1 above



6. Matters not agreed re: 5YHLS - the local housing need

The Council's case

6.1 The HLSS explains that the local housing need at 1st April 2022 is 742 dwellings per annum. This is based on the following calculation using the steps set out in paragraph 2a-004 of the PPG⁴³:

- Step 1 – set the baseline by calculating the projected annual household growth over a 10 year period using the 2014-based household projections with the current year being used as the starting point. For Cherwell, the annual household growth from 2022-32 is 532.60.
- Step 2 – make an adjustment to take account of affordability using the most recent median workplace-based affordability ratios. For Cherwell, the most recent median workplace-based affordability ratio when the HLSS was published (the 2021 ratio published in March 2022) is 10.28. The affordability adjustment is 1.3925. Therefore, the uncapped local housing need is 741.65 dwellings per annum.
- Step 3 – cap the level of any increase. For Cherwell, the local housing need figure should be capped at 40% above the adopted housing requirement of 1,142 dwellings per annum. This is 1,599 dwellings per annum.
- Step 4 – apply the cities and urban centres uplift – a 35% uplift is not applied because Cherwell is not in the top 20 cities and urban centres list. This means that the local housing need is capped at 741.65 dwellings per annum.

6.2 However, whilst the Council has not updated its HLSS to a base date of 1st April 2023, it now considers that the local housing need for the purposes of the 5YHLS calculation is 710 dwellings per annum. This is because it uses the following inputs for the standard method:

- Firstly, it uses the annual household growth over the 10-year period starting in 2023 rather than 2022; and
- Secondly, it uses the affordability ratio published in March 2023, rather than that published in March 2022.

6.3 It is of note that the HLSS was published in February 2023. Therefore, the “current year” at the time of publication was already 2023, yet the Council uses the annual average household projections over a 10-

⁴³ Paragraph: 004 Reference ID: 2a-004-20201216: “How is a minimum annual local housing need figure calculated using the standard method?”



year period from 2022 in the HLSS. Indeed, there is no indication in the HLSS that the Council will update its calculation of the local housing need after its publication but before the publication of the next version of the HLSS.

- 6.4 I understand from the Council’s proof of evidence for the Firethorn appeal and from the case it presented at the recent Milcombe hearing that the Council adopts this approach because of the wording in paragraph 2a-004 of the PPG which refers to the “current year” being used as the starting point for calculating the projected annual household growth over a 10 year period in step 1 and the application of “the most recent” affordability ratios in step 2.
- 6.5 In its proof of evidence for the Firethorn appeal, the Council also relied on a decision relating to an appeal made by Gladman Developments Ltd against the decision of Mid Suffolk District Council to refuse to grant outline planning permission for up to 160 dwellings at Poplar Hill, Stowmarket. The inquiry into that appeal took place in July 2019 and the appeal decision was issued on 13th August 2019. Paragraphs 54 and 55 of the Poplar appeal decision refer to the wording used in the PPG and conclude that the current year for the household projections (i.e. 2019) and the most recent affordability ratios (i.e. published in March 2019).
- 6.6 The 5YHLS period in the Poplar Hill case was from 1st October 2018 to 30th September 2023. This is different to the position in Cherwell where the base date of the 5YHLS is 1st April (2022). This is relevant because as I discuss below, the affordability adjustment used in step 2 of the standard method takes into account completions up to the end of September and therefore in the Poplar Hill case, the double counting issue which applies in Cherwell would not have applied in that case. However, the issue of double-counting is not considered in the Poplar Hill appeal decision.
- 6.7 At the Milcombe hearing, the Council also referred to step 4 of the standard method to calculating local housing need which relates to the cities and urban centres uplift. The Council’s view was that because paragraph 2a-037 of the PPG⁴⁴ explained that there was a 6 month transition period (from 16th December 2020 to 16th June 2021), the calculation of local housing need could change part way through the year. Reference was made to an appeal decision relating to Loxley Works in Sheffield where Sheffield City Council had sought to rely on the local housing need without the uplift because the base date of its 5YHLS position was 1st April 2020 before the uplift applied. The Inspector disagreed and found the uplift applied because his decision was made on 10th August 2021 after the transition period had ended.
- 6.8 However, the introduction of step 4 to the standard method in December 2020 was a change in policy by the Government rather than an adjustment relating to need. It followed the Government’s consultation on a revised standard method which had taken place earlier in 2020. The outcome of that consultation

⁴⁴ Paragraph: 037 Reference ID: 2a-037-20201216 - Is there a transition period for decision-making for those authorities where the cities and urban centres uplift applies?



was that the Government decided not to adjust the standard method for most authority areas and instead make a policy intervention by introducing a set 35% uplift to each of the 20 largest city and urban areas. This was on the basis that the urban centres were best served by existing infrastructure, have large quantities of brownfield land and include transport hubs. The introduction of the uplift was not related to need. Indeed it was a set 35% uplift regardless of the need generated through steps 1 to 3 of the standard method for those 20 areas. It is not comparable to Cherwell Council seeking to change the local housing need from that at the base date with reference to household projection and affordability inputs.

The Appellants' case

6.9 The Appellants' case is that the average annual household projections over the period 2022-32 and the affordability ratio which was published on 23rd March 2022 should be used and therefore the local housing need at 1st April 2022 is **742 dwellings per annum**. This is for the reasons set out below.

6.10 Firstly, the agreed base date of the 5YHLS calculation is 1st April 2022. This is the date that both the requirement and supply should relate. Paragraph 74 of the Framework requires the Council to:

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

6.11 As part of the annual assessment, the Government requires the Council to “identify” both the deliverable supply and (in this case) the local housing need, which the supply is to be assessed against.

6.12 Consistency is required between the base date for the supply and the base date for the requirement. There have been several appeal decisions, which have concluded this is the case. One example is a decision relating to an appeal made by Landex Ltd against the decision of Mid Suffolk District Council to refuse permission for the erection of 49 dwellings at land on the east side of Green Road, Woolpit⁴⁵. In that case, Mid Suffolk Council had included sites that were not deliverable at the base date, but had since received planning permission. The Inspector concluded that such an approach would “skew” the data. Paragraph 67 of the appeal decision states:

“In my view the definition of `deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018. There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March

⁴⁵ PINS ref: 3194926 – 28th September 2018 – core document **M26**



2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. **The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need.** Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment." (my emphasis)

6.13 More recently, an appeal decision regarding land south of Post Office Lane, Kempsey, Worcestershire (Malvern Hills)⁴⁶ was published where the calculation of local housing need was considered at a public inquiry in detail. In that case, like Cherwell, Malvern Hills Council's 5YHLS has a base date of 1st April 2022 but like Cherwell it sought to update its local housing need based on updated affordability ratios published in March 2023 and household growth using a current year of 2023 (paragraph 38). In doing so, Malvern Hills Council referred to paragraph 2a-004 of the PPG. However, the Kempsey Inspector concluded that:

- Consistency is required in terms of the base date for the need and supply;
- The Framework does not support an approach where the local housing need calculation is updated but the deliverable supply is not; and
- To do so would skew the assessment.

6.14 Paragraphs 38-42 of the appeal decision state:

"38. For the purposes of the HLSRa the Council sought to update its calculation of local housing need based on updated affordability ratios published by the Office of National Statistics in March 2023 and household growth using a current year of 2023. This resulted in a reduced figure of 386 dwellings per annum (405 dwellings per annum including a 5% buffer). It argues that this aligns with the PPG on the application of the standard method and in particular, as regards 'the current year being used as the starting point from which to calculate growth' and 'the most recent median workplace-based affordability ratios..., should be used'.

39. In support of that view the Council has drawn attention to a Report to the Secretary of State concerning appeal Ref. APP/D3505/W/18/3214377. In it the Inspector determined that it was not necessary to ensure consistency between the base date for the supply and either the 'current year' as the starting point from which to calculate growth or the then available affordability ratios. Whilst acknowledging that his conclusion did not align with the approach taken in an earlier appeal decision Ref. APP/P0119/W/17/3189592, the Inspector reasoned that if it was necessary to ensure consistency, then the PPG would have said so. In the event, the Secretary of State did

⁴⁶ PINS ref: 3313440 – 14th August 2023 – core document **M21**



not need to determine the point, as the Council submitted a new annual update to the Secretary of State following the close of the associated Inquiry.

40. To my mind, the PPG is not intended to be read in isolation. So far as relevant to this case, the use of the standard method is required by the Framework as part of the process to 'identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing...against their local housing need...'. In this context, consistency, in terms of need and supply data, is likely to flow from the application of the standard method as part of the process of annual update.

41. Whilst the HLSRa corrected the assumptions regarding the delivery of a small number of sites included in the supply position at 31 March 2022, as referred to above, it did not comprehensively review the supply of specific deliverable sites as part of the annual update required by the Framework. The Council indicated at the Inquiry that that would be done at a later date, as part of its annual monitoring cycle. **In my judgement, the approach set out in HLSRa of assessing the housing land supply position on the basis of an updated local housing needs calculation, but not a similarly updated supply position for specific deliverable sites is not the approach supported by the Framework.** Against this background, I consider that little weight is attributable to the HLSRa calculated housing land supply figure of 5.24 years (a surplus of 96 dwellings). In the Housing Need and Supply Statement of Common Ground Addendum, April 2023, **it is acknowledged that this approach provides for a skewed assessment, as the supply in 2022/23 will be included both in the supply and will have influenced the need. This adds further weight to my finding.**

42. My overall findings regarding the HLSR2022 and the HLSRa are consistent with those of my colleague who determined appeal Ref. APP/J1860/W/22/3304685."

6.15 For clarity, the three appeal decisions referred to in paragraphs 38 and 42 of the Kempsey decision relate to:

- PINS ref: 3189592 – Land south of Gloucester Road, Thornbury (South Gloucestershire)⁴⁷ where the Inspector considered 4 different scenarios relating to the calculation of South Gloucestershire's local housing need at 1st April 2017, including a scenario which used the current year (i.e. 2018) for the household projections and the most recent affordability ratio (published in 2018). The Inspector dismissed that scenario because it did not provide a "like-for-like assessment" and instead favoured the position tested at the Inquiry, which set out the calculation of local housing need at 1st April 2017 (paragraph 8);
- PINS ref: 3214377 – Land off Station Road, Long Melford (Babergh)⁴⁸ where as discussed in paragraph 39 of the Kempsey decision, the Inspector's Report to the Secretary of State for Long Melford considered that if it was necessary to ensure consistency between the base date for the requirement and supply the PPG would say so. However, the Secretary of State did not

⁴⁷ PINS ref: 3189592 – 14th May 2019 – core document **M27**

⁴⁸ PINS ref: 3214377 – 1st April 2020 – core document **M28**



need to make a determination on this point because an updated 5YHLS position statement was produced by Babergh before the decision was issued; and

- PINS ref: 3304685 – land at North Lodge, Main Road, Hallow (Malvern Hills)⁴⁹. Paragraphs 21 to 29 of that decision state:

“21. I have been made aware of various recent appeal decisions from 2023 that have shown the Council has been unable to demonstrate a 5YHLS. Meanwhile, very recent appeal decisions from May 2023 found that the Council’s housing land supply was deemed to be in the region of between 4.69 and 4.92 years.

22. Indeed, the Council has also acknowledged that following publication of The South Worcestershire Councils Five Year Housing Land Supply Report (December 2022) (SWCFYHLS), several development sites that were contributing towards its 5YHLS have been found not to be deliverable within the relevant period. Consequently, I am aware that the Council has accepted during some recent appeals that it was unable to demonstrate a suitable up-to-date provision of housing land.

23. Despite this, the Council now contends that it can demonstrate a 5YHLS. This is largely based upon the findings of the South Worcestershire Council’s Five Year Housing Land Supply Report Addendum, published in April 2023 (the Addendum Report).

24. The Addendum Report has sought to re-examine both the housing need and supply positions for the relevant South Worcestershire authority areas. The Council’s housing need requirements have been updated based upon the latest release of Office for National Statistics (ONS) data for ‘House Price to Workplace based earnings ratio’. This in turn has resulted in an adjustment to the affordability ratio for the area that has been used in the standard method for calculating housing supply. Fundamentally, this has led to Malvern Hills District Council identify a reduced housing need requirement for its area. Based on the reduced needs figure, the Addendum Report suggests that Malvern Hills can demonstrate a housing land supply of 5.24 years, even when accounting for a modest reduction in supply of deliverable dwellings compared to the December 2022 Report.

25. The Addendum Report is an interim statement and not an Annual Position Statement as set out at paragraph 75 of the Framework. In preparing the Addendum Report, it is also unclear as to what extent engagement has taken place between the local planning authority and developers or other parties that may have an impact on the delivery of dwellings. Therefore, despite a reduction in deliverable sites since the December 2022 SWCFYHLS, I remain sceptical as to whether the deliverability of all sites outlined within the Addendum have been examined in detail.

⁴⁹ PINS ref: 3304685 – 25th May 2023 – core document **M22**



26. Furthermore, I have fundamental concerns regarding the robustness of the calculation of the 5YHLS within the Addendum Report. I appreciate that the PPG recommends that the most recent ONS median workplace-based affordability ratios should be utilised in the standard methodology for calculating annual local housing need. However, in this instance, the Council has updated its need requirement to effectively account for the period 2023 - 2028 but appears not to have correspondingly updated its supply position to cover the same period.

27. Instead, it seems that at least in respect of Malvern Hills, the Addendum Report is reliant upon the previous supply position at its April 2022 base date, bar some sites that have subsequently been demonstrated to not be deliverable within the relevant five-year period (i.e. 2022 – 2027). It therefore does not take account of the latest housing completions or commitments within the authority area.

28. Effectively, the Addendum Report has calculated its 5YHLS based on mismatching periods of need (2023-2028) and supply (2022-2027). Given that the standard method for calculating local housing need also considers past delivery, this also raises concerns over the prospect of double counting resulting in an inaccurate assessment.

29. Notably, the housing completions for the year 2022/23 will influence the affordability ratio used when setting the minimum local housing need for the base year 2023. Hence, if considering the 5YHLS over the period 2022-27 against the minimum local housing need from 2023, the supply in 2022/23 will be included in both the supply but also influenced the need.” (emphasis added)

6.16 Following the Kempsey appeal decision, two further decisions were issued in Malvern Hills relating to appeals made by H2Land Ltd on sites in Collett’s Green⁵⁰. The appeal decisions were consistent with the findings of the Hallow and Kempsey Inspectors in relation to the mismatch of the requirement and supply calculations. Paragraph 51 of the appeal decisions state:

“It was established at the hearing that the 5YHLS in the Addendum Report has also been calculated on mismatching periods of need (2023-2028) and supply (2022-2027). Taking into consideration that the standard method for calculating local housing need also considers past delivery, this raises concerns of double counting thereby resulting in an inaccurate assessment.”

6.17 In summary, ensuring that the supply is being assessed against the housing need it responds to provides consistency. This approach is also consistent with the Housing Delivery Test, which measures housing in Cherwell against the local housing need as calculated at 1st April each year (plus Oxford’s unmet needs as I explain in the next section of my proof of evidence below). As set out in the Housing Delivery Test measurement rulebook, the calculation of local housing need for the HDT at 1st April 2022 “must use the

⁵⁰ PINS refs: 3300301 and 3316416 – 31st August 2023 – core document M23



affordability ratio for the previous calendar year”. Therefore, the Government expects the Council to deliver 742 dwellings in 2022/23 (plus some of Oxford’s unmet housing needs).

6.18 Secondly, as referred to in the Kempsey, Hallow and Collett’s Green appeal decisions, changing the inputs into the standard method would skew the assessment as the supply in 2022/23 will have influenced the need. This is in reference to the fact that the affordability ratio used in step 2 factors in past delivery. This is confirmed in paragraph 68-031 of the PPG⁵¹, which states:

“Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure”

6.19 The affordability ratio itself is calculated using the median house prices to the end of September each year. Consequently, the 2022 affordability ratio published in March 2023 is influenced by the rate of housebuilding which has taken place up to the end of September 2022. Therefore, the use of the 2022 affordability ratio would result in an unbalanced assessment because the rate of housebuilding between the base date of 1st April 2022 and the end of September 2022 on sites already in the supply influences the need.

6.20 For these reasons, the LHN for Cherwell at 1st April 2022 is 742 dwellings. This means that excluding Oxford’s unmet housing need, the housing requirement for Cherwell including a 5% buffer is 3,896 dwellings. The Council’s supply figure against this is 5.15 years (a surplus of just 112 dwellings)⁵².

⁵¹ Paragraph: 031 Reference ID: 68-031-20190722 – “How can past shortfalls in housing completions against planned requirements be addressed?”

⁵² Please see table F of appendix **EP1**



7. Matters not agreed re: 5YHLS – separate calculations

The Council's case

7.1 As set out in the HLSS, the Council provides two calculations in terms of its 5YHLS:

- One calculation for Cherwell. This includes the sites in Cherwell (excluding those allocated in the Partial Review to meet Oxford's unmet housing need) against the local housing need for Cherwell and a 5% buffer; and
- A separate calculation for Oxford's unmet housing need. This includes the deliverable supply of sites allocated in the Partial Review to meet Oxford's unmet housing needs against the housing requirement set out in the Partial Review, the shortfall against that requirement since 1st April 2021 and a 5% buffer.

7.2 In doing so, the Council refers to policy PR12a of the Partial Review: *"Delivering Sites and Maintaining Housing Supply"*, which states *"The Council will manage the supply of housing land for the purpose of constructing 4,400 homes to meet Oxford's needs. A separate five year housing land supply will be maintained for meeting Oxford's needs"*⁵³.

7.3 The two calculations are shown in the following table:

⁵³ Please see paragraphs 6.13 to 6.22 of the Council's Statement of Case



Table 7.1 – Council’s case re: 5YHLS

| | | Cherwell excluding Oxford’s unmet housing need | Oxford’s unmet housing need |
|---|---|--|-----------------------------|
| | Requirement | | |
| A | Annual requirement | 710 | 380 ⁵⁴ |
| B | Undersupply to be addressed in 5YHLS period | 0 | 340 |
| C | Total 5YHLS requirement (A X 5 + B) | 3,550 | 2,240 |
| D | Total 5YHLS requirement plus 5% buffer | 3,728 | 2,352 |
| E | Annual requirement plus 5% buffer | 746 | 470 |
| | Supply | | |
| F | Claimed supply (as set out in HLSS) | 4,008 | 80 |
| G | Supply in years (F / E) | 5.37 | 0.17 |
| H | Over / under supply (F – D) | 280 | -2,272 |

Background

7.4 The timetable for the Partial Review was as follows:

- Consultation on issues - 29th January to 11th March 2016;
- Consultation on options - 14th November 2016 to 9th January 2017;
- Consultation on proposed submission version - 17th July 2017 to 10th October 2017;
- Submitted for examination - 5th March 2018;
- Examination hearing sessions - 28th September 2018 and 5th, 6th, 12th and 13th February 2019;
- Consultation on main modifications - 8th November 2019 to 20th December 2019;
- Inspector’s report – 6th August 2020; and
- Adoption – September 2020

⁵⁴ i.e. 340 dwellings per annum 2022-26 and 540 dwellings per annum in 2026/27 = 1,900 / 5 = 380



7.5 The Partial Review was submitted before the Framework was revised in 2018. Under transitional arrangements, it was considered under the 2012 Framework.

7.6 Questions 10 and 11 of the issues consultation document (January 2016) asked the following:

“Identifying a Deliverable and Developable Supply of Land

10. Should a specific housing supply be identified for meeting Oxford's needs with its own five year supply of deliverable sites?

11. How could Cherwell ensure that a five year supply for Oxford is managed without the existing Cherwell strategy and its housing requirements being adversely affected?”

7.7 Paragraphs 8.9 to 8.11 of the Options consultation document (November 2016) states:

“8.9 Producing a plan to meet Oxford's needs effectively provided the district with an additional five year supply requirement. In our previous Issues Paper we consulted on whether the housing supply we identify needed to be effectively 'ring-fenced' for the purpose of monitoring and managing supply and avoiding harm to the delivery of our existing growth strategy. We also want to ensure that the sites that we ultimately allocate to meet Oxford's needs are the ones that are delivered.

8.10 Some people considered that 'ring-fencing' a specific supply for Oxford for monitoring purposes was required to avoid harm to the Cherwell strategy (for example, if additional land were required to be released to boost the five year supply it could be contained to a specific area). Some considered that it was necessary to manage land supply and that an Oxford 'fringe' area could be defined. Others felt that there should not be disaggregation of supply by sub-area, that it would be artificial to do so, that national policy did not provide for it, that the housing supply for Cherwell and the supply for Oxford should become a total requirement. Some felt that there would be monitoring difficulties in determining which new homes contributed to which five year supply and that Oxford's influence already extended across the district.

8.11 Having reviewed these responses we consider that how we spatially or geographically manage a five year supply will depend on our final proposed strategy. We will therefore set out our approach in our Proposed Submission document which will be available for public comment in 2017.”

7.8 The submission version of the Partial Review (July 2017) then introduced policies PR12a: “Delivering Sites and Maintaining Housing Supply” and PR12b: “Sites not Allocated in the Partial Review”. It is relevant that the submission version of the Partial Review sought to require a 5YHLS to be demonstrated on each individual site.

7.9 Paragraphs 5.164 to 5.166 of the submission version of the Partial Review state:

“5.164 We need to plan our housing supply through use of a housing trajectory which must:



1. show that the required supply can be delivered by 2031
2. show that a five year supply of deliverable sites can be provided
3. show that there is provision to increase supply over the plan period if for an unanticipated reason the projected rate of housing delivery fall.

5.165 Because the Partial Review is a time limited, focused Plan we have built in a number of measures in the housing trajectory and policy PR12a to ensure that supply can be maintained:

1. we have defined a specific deliverable requirement of 1700 homes for the period 2021-2026
2. we are phasing the delivery of two sites which could be brought forward for earlier delivery if supply was not maintained at the required rate
3. we are requiring developers to clearly show that they can maintain a five year supply for their own sites

5.166 Nevertheless, the Council cannot control the rate at which houses are delivered. If a five year supply cannot be raised for reasons outside the Council's control, planning applications for unplanned development might be submitted. We need to ensure that our objectives and vision are achieved and to avoid harm to the strategy for Cherwell. Consequently, policy PR12b necessitates a formal Council decision that additional land beyond that allocated in the Partial Review is needed to ensure the requisite housing supply and that the proposed developments comply with policy PR1 ('Achieving Sustainable Development for Oxford's needs').

7.10 Paragraph 95 of the Inspector's Report (August 2020) states:

"Each of the allocation policies refers to the need for a Delivery Plan including a start date, and a demonstration to show how the development would be completed by 2031. **As drafted, the policies set out the need for a programme showing how a five-year supply of housing (for the site) will be maintained year on year. The inclusion of the term (for the site) introduces a rather inflexible element. The important point is that all sites designed to meet Oxford's unmet need should act in concert to maintain a five-year supply.** To be effective, and comply with national policy, the relevant criterion in each allocation policy must be changed to reflect that by the deletion of (for the site) in each case [MM 57, MM 67, MM 81, MM 94, MM 110, and MM 123]." (my emphasis)

7.11 Paragraphs 148 and 149 of the Inspector's Report then state:

"148. Policy PR12a is concerned with delivery and the maintenance of housing supply. 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. Paragraph 5.165 of the supporting text deals with the trajectory envisaged and sets out three principles. The second refers to the phased delivery of two sites which could be brought forward earlier if required. The passage of time means that phased delivery in this way is no longer possible and this criterion needs to be removed [MM 135] to ensure that the policy itself is supported in an effective way.

149. **The third principle, as drafted, refers to the requirement that developers maintain a five-year supply for their own sites. As set out above in dealing with the individual allocations, this requirement is not necessary because it is supply overall that matters.** The third principle needs to be amended to explain that what is required is that individual sites operate in concert to maintain a five-year supply. This change [MM 136] is necessary to make the policy effective and compliant with national policy." (emphasis added)

7.12 Paragraph 151 of the Inspector's report again explained that it is maintaining an overall 5YHLS that matters, not a continuous 5YHLS on a site specific basis. It states:

"The fifth paragraph of the policy as drafted says that permission will only be granted for any of the allocated sites if it can be demonstrated at application stage that they will deliver a continuous five-year supply on a site-specific basis. This needs to be amended to reflect the fact that, as set out in national policy, it is maintaining a five-year supply overall that matters. This change [MM 138] is required to make the policy comply with the national approach, and effective."

7.13 Paragraph 1.3 of the "Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need" (the "Partial Review") explains that the Partial Review is effectively a supplement or addendum to the adopted Cherwell Local Plan 2011-31 and is part of the statutory Development Plan for the district.

7.14 Paragraph xxi (page 9) of the Executive Summary to the Partial Review states:

"The Plan seeks to ensure that the necessary housing supply will be maintained by managing planned delivery and maintaining a separate five year supply of housing sites to specifically meet Oxford's unmet needs within Cherwell (policy PR12a). It also makes clear that applications for planning permission for development to meet Oxford's needs that is not allocated in the Plan will not be supported unless the Council has taken a formal decision that additional land beyond that allocated is required to ensure the requisite housing supply, that the demonstrable support of the local community has been gained through pre-application consultation and subject to other criteria".

7.15 The first part of policy PR12a of the Partial Review then states:

"The Council will manage the supply of housing land for the purpose of constructing 4,400 homes to meet Oxford's needs. A separate five year housing land supply will be maintained for meeting Oxford's needs"



7.16 The adopted versions of paragraphs 5.165 and 5.166 of the Partial Review state:

“5.165 Because the Partial Review is a time limited, focused Plan we have built in a number of measures in the housing trajectory and policy PR12a to ensure that supply can be maintained:

1. we have defined a specific deliverable requirement of 1700 homes for the period 2021-2026
2. we are requiring developers to clearly show that they can contribute towards maintaining a five year supply.

5.166 Nevertheless, the Council cannot control the rate at which houses are delivered. If a five year supply cannot be raised for reasons outside the Council’s control, planning applications for unplanned development might be submitted. We need to ensure that our objectives and vision are achieved and to avoid harm to the strategy for Cherwell. Consequently, policy PR12b necessitates a formal Council decision that additional land beyond that allocated in the Partial Review is needed to ensure the requisite housing supply and that the proposed developments comply with policy PR1 (‘Achieving Sustainable Development for Oxford’s needs’).”

7.17 The measures referred to in paragraph 5.165 have failed to maintain supply. The HLSS does not consider that any dwellings will be delivered on the Partial Review between 2021 and 2026 (a shortfall of 1,700 homes). In addition, the Council itself only considers 80 dwellings are deliverable on sites allocated in the Partial Review by 31st March 2027.

7.18 To support its case at the Milcombe hearing, the Council referred to appeal decisions in Tewkesbury⁵⁵ and Malvern Hills⁵⁶. However, both situations are different to that of Cherwell as these appeal decisions addressed cases where there was a joint local plan which was more than five years old. In Tewkesbury, the issue was related to supply and specifically whether Tewkesbury could include the sites within its administrative area allocated to meet Gloucester’s need against its local housing need now that the strategic policies in the Joint Core Strategy were more than five years old. Both Inspectors concluded that this should not be the case.

7.19 In the Leigh Sinton case in Malvern Hills, the issue was whether the Councils of Malvern Hills, Wychavon and Worcester could measure 5YHLS on a joint basis without having identified that should be the case through an up to date development plan. The Inspector did not draw a conclusion on this issue.

7.20 The issue in Cherwell is different. There is no Joint Plan and whilst the strategic policy BSC1 has been reviewed and found to require updating, the component of the housing requirement for Oxford’s unmet

⁵⁵ PINS ref: 3314936 – Gotherington – 11th September 2023, PINS ref: 3284820 – Hill End Road, Twynning – 24th March 2023

⁵⁶ PINS ref: 3289643 – Leigh Sinton Farms – 5th July 2022



housing need is set out in strategic policies in the Partial Review which are less than five years old. The situation is comparable with the Vale of White Horse, which I discuss below.

The Appellants' case

7.21 I conclude that separate 5YHLS calculations should not be undertaken for the following reasons.

Consistency with the Framework

7.22 The Council's approach of providing separate 5YHLS calculations is inconsistent with the 2023 Framework. It is the Framework which sets out what a 5YHLS is, how it should be calculated and what the consequences of failing to demonstrate one are.

7.23 The Cherwell Local Plan 2011 – 31 Part 1 and the Cherwell Local Plan 2011 – 2031 (Part 1) Partial Review – Oxford's Unmet Housing Need were both adopted under the 2012 Framework. Paragraph 47 of the (archived) 2012 version of the Framework explained that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their "housing requirements". It stated:

"To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;"

7.24 The 2023 Framework and associated guidance in the PPG do not set out that there should be separate 5YHLS calculations as the Council proposes; one for the need of an area and one for the unmet need of a neighbouring authority. Instead, paragraphs 61 and 66 of the Framework require local planning authorities to identify "a housing requirement for their whole area" which includes the local housing need using the standard method set out in the PPG. In addition to the local housing need, 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.



7.25 Paragraph 60 of the Framework refers to the Government’s objective of significantly boosting the supply of homes. It states:

“To support the Government’s objective of significantly boosting the supply of homes, 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 and that land with permission is developed without unnecessary delay.”

7.26 Paragraph 61 of the Framework states:

“To determine the minimum number of homes needed, strategic policies should be informed by a local housing need 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. In addition to the local housing need 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” (my emphasis)

7.27 Paragraph 66 of the Framework states:

“Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.” (my emphasis)

7.28 This policy was not included in the 2012 version of the Framework, which required co-operation with neighbouring authorities (paragraph 157), working with neighbouring authorities on the preparation of a SHMA where housing market areas crossed administrative boundaries (paragraph 159) and preparing a strategy which seeks to meet the objectively assessed development requirements including unmet requirements from neighbouring authorities where it is reasonable to do so (paragraph 182). However, the 2012 version of the Framework did not state that there should be a housing requirement which comprises the need for the local planning authority and the unmet need from neighbouring areas as the current version of the Framework states.



7.29 Further guidance is contained within the Planning Practice Guidance (PPG). Paragraph 2a-010 of the PPG⁵⁷ answers the question: “When might it be appropriate to plan for a higher housing need figure than the standard method indicates?” as follows:

“The government is committed to ensuring that more homes are built and supports ambitious authorities who want to plan for growth. The standard method for assessing local housing need provides a minimum starting point in determining the number of homes needed in an area. It does not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour. Therefore, there will be circumstances where it is appropriate to consider whether actual housing need is higher than the standard method indicates.

This will need to be assessed prior to, and separate from, considering how much of the overall need can be accommodated (and then translated into a housing requirement figure for the strategic policies in the plan). Circumstances where this may be appropriate include, but are not limited to situations where increases in housing need are likely to exceed past trends because of:

- growth strategies for the area that are likely to be deliverable, for example where funding is in place to promote and facilitate additional growth (e.g. Housing Deals);
- strategic infrastructure improvements that are likely to drive an increase in the homes needed locally;
- or an authority agreeing to take on unmet need from neighbouring authorities, as set out in a statement of common ground;

There may, occasionally, also be situations where previous levels of housing delivery in an area, or previous assessments of need (such as a recently-produced Strategic Housing Market Assessment) are significantly greater than the outcome from the standard method. Authorities are encouraged to make as much use as possible of previously-developed or brownfield land, and therefore cities and urban centres, not only those subject to the cities and urban centres uplift may strive to plan for more home. Authorities will need to take this into account when considering whether it is appropriate to plan for a higher level of need than the standard model suggests.”

7.30 Again, this guidance was not included in the previous version of the PPG which was introduced in 2014 and updated in March 2015. It is guidance to support the current wording of the Framework at paragraphs 61 and 66 which explain the process of establishing a housing requirement.

7.31 Paragraph 74 of the 2023 Framework then sets out the minimum requirement for Local Planning Authorities to demonstrate a 5YHLS against their “housing requirement” set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old. It states:

⁵⁷ Paragraph: 010 Reference ID: 2a-010-20201216 – Revision date 16 12 2020



“Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old

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

- a) 5% to ensure choice and competition in the market for land; or
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan⁴⁰, to account for any fluctuations in the market during that year; or
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.”

7.32 Footnote 39 of the Framework explains that if the strategic policies have been reviewed and found not to require updating then the 5YHLS should continue to be measured against the adopted housing requirement set out in the strategic policies after the policies become more than five years old. It also explains that where local housing need should be used for assessing whether a 5YHLS exists, it should be calculated using the standard method set out in national planning guidance. Paragraph 74 and footnote 39 refer to a housing requirement (single) which could be set out in “strategic policies” (plural).

7.33 Further guidance is included in chapter 68 of the Planning Practice Guidance: “Housing supply and delivery”.

7.34 Paragraph 68-001 of the PPG⁵⁸ answers the question: “*What policies are in place to encourage local authorities to promote a sufficient supply of land for housing and support delivery?*” as follows:

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

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

⁵⁸ Paragraph: 001 Reference ID: 68-001-20190722 – revision date 22 July 2019



7.35 Paragraph 68-002 of the PPG⁵⁹ answers the question: “What is a 5 year land supply?” as follows:

“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.” (emphasis added)

7.36 Paragraph 68-003 of the PPG⁶⁰ answers the question: “What is the purpose of the 5 year housing land supply?” as follows:

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

7.37 Paragraph 68-008 of the PPG⁶¹ answers the question: “What happens if an authority cannot demonstrate a 5 year housing land supply?” as follows:

“In plan-making, the Inspector examining the plan will test the evidence to ensure that the 5 year housing land supply identified in strategic policies is sound. If it is not, wherever possible the Inspector will recommend main modifications to the plan to ensure that the plan identifies a 5 year housing land supply from its date of adoption. **In decision-taking, if an authority cannot demonstrate a 5 year housing land supply, including any appropriate buffer, the presumption in favour of sustainable development will apply, as set out in paragraph 11d of the National Planning Policy Framework.**” (emphasis added)

7.38 The 2023 Framework therefore clearly envisages one housing requirement which includes the local housing need for the area and any unmet need from neighbouring areas and it is this figure which the 5YHLS should be measured against.

7.39 It is of note that the approach of a single housing requirement which comprises the need for the area and Oxford’s unmet housing need is taken in the South Oxfordshire Local Plan. This plan was examined and adopted under the current wording of the Framework⁶².

⁵⁹ Paragraph: 002 Reference ID: 68-002-20190722 – revision date 22 July 2019

⁶⁰ Paragraph: 003 Reference ID: 68-003-20190722 – revision date 22 July 2019

⁶¹ Paragraph: 008 Reference ID: 68-008-20190722 – Revision date 22 July 2019

⁶² The wording of paragraphs 61, 66 and 74 in the 2023 Framework are the same as that used in paragraphs 60, 65 and 73 of the 2018 Framework, which the South Oxfordshire Local Plan was examined under.



7.40 The South Oxfordshire Local Plan 2035 was adopted in December 2020, which was after the unmet needs of Oxford had been identified. The 4,950 dwellings of Oxford’s unmet housing need is therefore specifically referred to in the South Oxfordshire Local Plan 2035.

7.41 Policy STRAT1: “The Overall Strategy” explains (amongst other things) that part of the overall strategy is to meet unmet housing needs of Oxford City on strategic allocations adjacent to the boundary of Oxford near to where that need arises. Paragraph 3.30 of the South Oxfordshire Local Plan explains that the sites identified to meet Oxford’s unmet needs will provide an increased proportion of affordable housing in line with the levels required by Oxford City.

7.42 Policy STRAT2: “South Oxfordshire Housing and Employment Requirements” explains that the housing requirements are:

- 18,600 dwellings for South Oxfordshire between 1st April 2011 and 31st March 2025;
- 4,950 dwellings to meet Oxford’s unmet need between 1st April 2021 and 31st March 2025;
- A total housing requirement for the plan period of 23,550 dwellings; and
- This is to be stepped:
 - 900 dwellings between 2011/12 and 2025/26;
 - 1,120 dwellings between 2026/27 and 2031/32; and
 - 1,110 dwellings between 2032/33 and 2034/35.

7.43 South Oxfordshire’s latest 5YHLS statement was published in September 2023. It concludes that against the stepped housing requirement (plus shortfall) and a 5% buffer, the Council can demonstrate a 4.2 year supply. The tilted balance to the presumption in favour of sustainable development applies in South Oxfordshire on this basis.

7.44 As with South Oxfordshire, West Oxfordshire’s Local Plan (2011 to 2031) was adopted on 27th September 2018 after the unmet housing need of Oxford was known. It was examined under the 2012 version of the Framework. Policy H2 of the West Oxfordshire Local Plan sets out a requirement to deliver 15,950 homes from 2011 to 2031. The requirement is stepped as shown in the following table:



Table 7.2 – West Oxfordshire’s Adopted housing requirement

| Year | West Oxon’s needs | Oxford City’s needs | Combined annual requirement |
|--------------|-------------------|---------------------|-----------------------------|
| 2011 - 2021 | 550 dpa | 0 | 550 dpa |
| 2021 - 2023 | 525 dpa | 275 dpa | 800 dpa |
| 2023 - 2024 | 700 dpa | 275 dpa | 975 dpa |
| 2024 - 2031 | 850 dpa | 275 dpa | 1,125 dpa |
| TOTAL | 13,200 | 2,750 | 15,950 |

7.45 West Oxfordshire’s latest Housing Land Supply Position Statement was published in November 2022. It concludes that against the stepped housing requirement, the Council can only demonstrate a 4.1 year supply. The tilted balance to the presumption in favour of sustainable development applies in South Oxfordshire on this basis.

7.46 It is also relevant that Cherwell itself proposes to abandon its approach to separate housing requirements and 5YHLS calculations in its emerging Local Plan.

7.47 As I have set out in section 2 of my proof of evidence, through the draft Local Plan, the Council is proposing to abandon the separate approach to calculating 5YHLS. The draft Local Plan proposes one housing requirement, which has been informed by the local housing need calculated using the standard method in accordance with paragraph 61 of the Framework as set out above. It then proposes an increase to the local housing need to meet Cherwell’s needs with reference to the contents of paragraph 2a-010 of the PPG as described above. Finally, it then adds to this the unmet needs from Oxford which are to be met in Cherwell, in accordance with paragraph 61 of the Framework.

7.48 Paragraphs 3.159 and 3.160 of the Local Plan Review use the same wording as paragraph 61 of the Framework. They state:

“3.159. The new Local Plan needs to be informed by a local housing need assessment, conducted using a ‘standard method’ in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals.

3.160. In addition to the local housing need figures 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”



7.49 In summary, the Framework envisages a single housing requirement which the 5YHLS is to be measured against. The housing requirement is to be informed by the local housing need for the local planning authority area (which is the basis on which it is calculated through the standard method) and to this is added the unmet need from neighbouring authorities to form the housing requirement.

7.50 Consistent with the Framework, in terms of a 5YHLS calculation, the strategic policies of the Cherwell Local Plan 2011 – 31 Part 1 adopted July 2015 (incorporating Policy Bicester 13 re-adopted on 19 December 2016) are more than five years old, have been reviewed and found to require updating. Therefore, the component of the housing requirement which relates to Cherwell’s needs should be replaced by the local housing need (of 742 dwellings per annum). However, the policies of the Cherwell Local Plan 2011-31 (Part 1) Partial Review – Oxford’s Unmet Housing Need, adopted September 2020 are less than five years old and therefore 380 dwellings⁶³ should be added to the 742 figure. Taking the two components together, the total housing requirement for the district for the purposes of the 5YHLS calculation is 1,122 dwellings per annum⁶⁴.

7.51 The same approach is used in Vale of White Horse District Council (Oxfordshire) where the strategic policies in its Part 1 plan are more than five years old, have been reviewed and found to require updating but the strategic policies in its Part 2 plan, which relate to Oxford’s unmet housing need are less than five years old. As a result, Vale of White Horse calculate their 5YHLS against the total housing requirement for the district comprising of the local housing need for Vale of White Horse and Oxford’s unmet housing need. The Vale of White Horse now calculates its 5YHLS against an annual requirement of 844 dwellings per annum based on:

- 661 dwellings per annum for Vale of White Horse’s local housing need; and
- 183 dwellings per annum for Oxford’s unmet housing need.

7.52 This approach was found to be appropriate by Inspector Jonathan Bore In a relatively recent decision dated 13th March 2023 relating to an appeal made by David Wilson Homes against the decision of Vale of White Horse Council’s decision to refuse to grant outline planning permission for up to 300 dwellings at land east of Grove, Grove⁶⁵.

7.53 Paragraphs 10 to 13 of the appeal decision:

“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

⁶³ i.e. 340 dwellings per annum 2022-26 and 540 dwellings per annum in 2026/27 = 1,900 / 5 = 380

⁶⁴ i.e. 742 + 380 = 1,122

⁶⁵ PINS ref: 3310788, core document **M40**



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 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.”

Consistency with the Housing Delivery Test

- 7.54 A single housing requirement for the 5YHLS calculation is also consistent with the way the Government measures housing delivery in Cherwell through the Housing Delivery Test (HDT). The HDT was introduced in the 2018 Framework and was therefore not considered in the examination of the Cherwell Local Plan Part 1 or the Partial Review.



7.55 Paragraph 12 of the HDT measurement rule book explains that where *“the latest adopted housing requirement figure”* is less than five years old, or has been reviewed and does not need updating, 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”

7.56 In terms of the unmet need from neighbouring authorities, footnote 14 of the HDT measurement rule book explains that this is included in the calculation “where committed to within an adopted plan”. This is the case here as Oxford’s unmet housing need is committed to within Cherwell’s Partial Review.

7.57 Again, the wording of the HRT measurement rule book refers to a single housing requirement which includes unmet need from neighbouring authorities. In Cherwell, as I explained in section 3 of my proof of evidence, the HDT is measured against Cherwell’s local housing need plus Oxford’s unmet housing need.

7.58 The same approach used in the HDT should also be taken with the 5YHLS. This is because whilst the HDT looks at past delivery and the 5YHLS looks at future supply, the two are intrinsically linked. The outcome of the HDT result determines which buffer should apply as part of the 5YHLS calculation. In accordance with paragraph 74 and footnote 41 of the Framework, if the HDT result is less than 85% then the 20% buffer applies *“to improve the prospect of achieving the planned supply”*. As I have explained above and in section 3 of my proof of evidence, *“the planned supply”* in the HDT includes both the local housing need for Cherwell and Oxford’s unmet housing need. The 5YHLS should be assessed on the same basis.

The Council’s approach avoids the consequences of failing to deliver housing and demonstrate a deliverable supply

7.59 The Council’s approach is also inconsistent with the Framework because it avoids the consequences of a failure of delivery and supply to meet Oxford’s unmet housing need. Both the 5YHLS and the HDT are products of the Framework to meet the Government’s objective of significantly boosting housing delivery and supply. The avoidance of the consequences of failing to demonstrate a 5YHLS and deliver housing would be contrary to this objective.

7.60 Paragraph 11d of the Framework sets out the presumption in favour of sustainable development. Footnote 8 to paragraph 11d states:



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

7.61 Paragraph 74 and footnote 41 of the Framework explain that the 20% buffer will apply where the latest HDT result is less than 85%.

7.62 Paragraph 76 of the Framework states:

“To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under delivery and identify actions to increase delivery in future years.”

7.63 No dwellings have been delivered on the Partial Review sites and even on the Council’s figures, only 80 dwellings are considered deliverable by 31st March 2027 equating to 0.2 years against the requirement and shortfall and 5% buffer. However, on the Council’s case it avoids the following consequences:

- The Council’s case is that the tilted balance does not apply as a result of a 5YHLS shortfall because it can demonstrate a deliverable supply of 5.37 years excluding Oxford’s Unmet Housing Need;
- Despite there being no delivery against the requirement to meet Oxford’s unmet housing need, the Council avoids the application of the tilted balance through the HDT because housing delivery is measured against a single housing requirement for Cherwell;
- The Council avoids the application of the 20% buffer because the trigger is the HDT result and that is measured against a single housing requirement for Cherwell as discussed above; and
- The Council avoids preparing a HDT Action Plan in accordance with paragraph 76 of the Framework because despite a lack of delivery and supply to meet Oxford’s unmet housing need, the HDT is measured against a single housing requirement for Cherwell as discussed above.

7.64 For these reasons, a single 5YHLS calculation should be made. The consequence of applying a single 5YHLS calculation is that even on the Council’s supply figure, it can only demonstrate a 3.27 year supply⁶⁶. The tilted balance to the presumption in favour of sustainable development therefore applies.

⁶⁶ Please see Table B of appendix EP1



The application of the tilted balance

- 7.65 As set out in the Council’s statement of case for this appeal, it does not consider the tilted balance to the presumption in favour of sustainable development applies because the Council claims it can demonstrate a 5.37 year supply in Cherwell against the local housing need. However, even on the Council’s approach it only claims to demonstrate a 0.2 year supply for Oxford’s unmet housing need.
- 7.66 As I set out above, policy PR12a of the Partial Review states: *“A separate five year housing land supply will be maintained for meeting Oxford’s needs”*. Paragraph 148 of the Partial Review Inspector’s Report states:
- “Policy PR12a is concerned with delivery and the maintenance of housing supply. 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”*
- 7.67 Therefore, even on the Council’s case for separate 5YHLS calculations, it must demonstrate a 5YHLS in both Cherwell and for Oxford’s unmet housing need.
- 7.68 Given that the Council can only demonstrate a 0.2 year supply for Oxford’s unmet housing need, the tilted balance to the presumption in favour of sustainable development applies in any event. Footnote 8 of the Framework explains that the tilted balance to the presumption in favour of sustainable development applies for applications involving the provision of housing in *“situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74)”*.
- 7.69 The Partial Review allocates 6 sites to meet Oxford’s Unmet Housing Need. It does not define a geographical area where other sites could come forward to address the shortfall in the 5YHLS and there are no reserve sites. There is no windfall allowance. The 6 allocated sites are also surrounded by the Green Belt and the existing urban areas. Consequently, to address the shortfall in the 5YHLS for Oxford’s unmet housing need, sites would need to come forward elsewhere in Cherwell.
- 7.70 Sites elsewhere in Cherwell are capable of meeting Oxford’s need because Oxfordshire operates as one Housing Market Area. This was set out in the 2014 Strategic Housing Market Assessment (SHMA)⁶⁷ and confirmed in the latest Housing and Economic Needs Assessment (HENA)⁶⁸. Again, the Local Plan Review

⁶⁷ Core document I3

⁶⁸ Core document H13



identifies a single housing requirement which includes Cherwell's need and Oxford's unmet housing need. The supply to meet that requirement is to be provided across the District.

7.71 Policy PR12b of the Partial Review: *"Sites Not Allocated in the Partial Review"* states that applications for planning permission for the development of sites to meet Oxford's needs that are not allocated in the Partial Review will not be supported unless the criteria in the policy are met. The first criterion is that the Council must make a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply. However, despite the significant lack of delivery and supply, the Council has not made a formal decision that additional land is needed.

7.72 A report to the Council's Executive in February 2023 stated:

3.28 Policy PR12b of the Partial Review includes the following: 'Applications for planning permission for the development of sites to meet Oxford's needs that are not allocated in the Partial Review will not be supported unless... Cherwell District Council has taken a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply...'

3.29 Officers do not recommend that such a decision is taken at the current time for the following reasons taken as a whole:

1. The Plan has a specific focus on meeting the identified and unmet needs of Oxford city to 2031. It will not be followed by a replacement plan in the usual way. Particular care is needed not to release more land than is required to deliver the Plan;
2. The Plan (and therefore its delivery) was delayed by an Examination which ran from March 2018 to July 2020;
3. The Plan was 'adopted' in September 2020 following the receipt of an Inspector's Report on the examination of the plan which required consideration of the then NPPF's tests on deliverability and developability;
4. The residential sites continue to be actively promoted;
5. Development briefs have been approved by the Planning Committee for all sites bar one (Land East of the A44 - PR8) – which is at an advanced stage of preparation. The briefs 'front load' the design process in the interests of providing certainty and clarity and supporting delivery. They should assist in avoiding prolonged pre-application discussions on design principles;
6. Planning application have been received site PR9 (Land West of the A44), PR7a (South East Kidlington), and PR7b (Stratfield Farm). Pre-application discussions are occurring on most other sites. Planning Performance Agreements have been signed for three sites.



7. The infrastructure requirements to support all sites are set out within the Infrastructure Schedule accompanying the plan. The County Council was engaged closely in developing site policies and infrastructure needs;

8. 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” (emphasis added)

7.73 Therefore, it is unclear how the Council intends to address the significant shortfall in the 5YHLS for Oxford’s unmet housing need.

Summary

7.74 In summary, the Council’s approach of having separate 5YHLS calculations is inconsistent with the 2023 Framework, inconsistent with how housing delivery is measured through the HDT and seeks to avoid the consequences set out in the Framework which apply when there has been a failure of housing delivery is a shortfall in the 5YHLS. The Local Plan Review, however, has been drafted in the context of the 2023 Framework and guidance and therefore proposes a single housing requirement including Cherwell’s need and Oxford’s unmet housing need. Consequently, the Council intends to abandon the separate 5YHLS calculation. This is consistent with the approach taken in South Oxfordshire whose plan was examined under the current wording of the Framework.

7.75 The 5YHLS should be measured against the local housing need for Cherwell (of 742 dwellings per annum) and to this should be added Oxford’s unmet housing need (of 380 dwellings per annum). This approach is consistent with the approach taken in the Vale of White Horse which was found to be appropriate at appeal.

7.76 A single 5YHLS calculation for Cherwell means that the Council can only demonstrate a 3.27 year supply even on its supply figure⁶⁹.

⁶⁹ Please see Table B of Appendix EP1



8. Matters not agreed re: 5YHLS – the “deliverable” supply

- 8.1 The HLSS claims that the deliverable supply at 1st April 2022 is 4,244 dwellings (plus 80 dwellings on the Partial Review sites). The removal of 236 dwellings as set out in table 5.1 means that the Council’s position at 1st April 2022 is now 4,008 dwellings (80 dwellings on the Partial Review sites).
- 8.2 If a single 5YHLS calculation is made including Oxford’s unmet housing need, then the Council cannot demonstrate a 5YHLS. If separate calculations should be made then either 112 or 280 dwellings would need to be removed from the Council’s supply for there to be a shortfall in the 5YHLS in Cherwell and there is a very significant shortfall in the Partial Review.
- 8.3 As set out in the introduction to my proof of evidence, I conclude that 443 dwellings should be removed from the Council’s deliverable supply and 80 dwellings should be removed from the three Partial review sites. This is on the following sites:



Table 8.1 – Disputed sites

| LPA ref: | Address | Capacity (Net) | Council 5YHLS | Appellant 5YHLS | Difference |
|--------------|---|----------------|---------------|-----------------|-------------|
| Bicester 12 | South East Bicester (Wretchwick Green) | 1,500 | 50 | 0 | -50 |
| 15/01357/F | Former RAF Upper Heyford | 89 | 89 | 0 | -89 |
| 21/03523/OUT | Former RAF Upper Heyford | 31 | 31 | 0 | -31 |
| Bicester 1 | North West Bicester Phase 2 | 500 | 20 | 0 | -20 |
| Bicester 10 | Bicester Gateway Business Park, Wendlebury Road | 273 | 80 | 0 | -80 |
| Banbury 17 | South of Salt Way | 1,000 | 350 | 237 | -113 |
| Bicester 3 | South West Bicester Phase 2 | 60 | 60 | 0 | -60 |
| | | Total | | | -443 |
| PR7a | Land south east of Kidlington | 540 | 30 | 0 | -30 |
| PR7b | Land at Stratfield Farm, Kidlington | 430 | 20 | 0 | -20 |
| PR9 | Land west of Yarnton | 120 | 30 | 0 | -30 |
| | | Total | | | -80 |

8.4 I conclude that these sites should be removed from the 5YHLS because the Council has not provided the clear evidence required for their inclusion in accordance with the definition set out in the Framework, which I now discuss.

What constitutes a deliverable site?

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

8.5 Footnote 11 of the 2012 Framework stated:

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



viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

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

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

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

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

- 8.7 Therefore, under the 2012 Framework, all sites with planning permission, regardless of their size or whether the planning permission was in outline or in full were to be considered deliverable until permission expired unless there was clear evidence that schemes would not be “implemented” within five years. The PPG went further by stating that allocated sites “could” be deliverable and even non-allocated sites without planning permission “can” be considered capable of being delivered.
- 8.8 The Government consulted on the draft revised Framework between March and May 2018. The draft revised Framework provided the following definition of “deliverable” in the glossary:

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



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

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

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

8.11 The government’s response was as follows:

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

Current National Planning Policy and Guidance

8.12 The definition of “deliverable” is set out on page 67 of the Framework (2023) and states:

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

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

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

8.13 The PPG was most recently updated on 22nd July 2019. Paragraph 68-007 of the PPG⁷⁰ provides some examples of the types of evidence, which could be provided to support the inclusion of sites with outline planning permission for major development and allocated sites without planning permission. It states:

⁷⁰ Paragraph 007 Reference ID: 68-007-20190722: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”



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

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

Such evidence, to demonstrate deliverability, may include:

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

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

Assessment

- 8.14 Whilst the previous definition in the 2012 Framework considered that all sites with planning permission should be considered deliverable, the revised definition in the 2023 Framework is clear that only sites with detailed consent for major development should be considered deliverable and those with outline planning permission should only be considered deliverable where there is clear evidence that housing completions will begin in five years.
- 8.15 As above, the PPG has been updated to provide some examples of the type of evidence which may be provided to be able to consider that sites with outline planning permission for major development, allocated sites and sites identified on a brownfield register are deliverable.



Relevant appeal decisions

8.16 There have been several appeal decisions which have considered the definition of “deliverable” as set out in the 2023 version of the Framework and whether “clear evidence” has been provided for the inclusion of sites which only have outline planning permission for major development or are allocated without planning permission. Whilst each appeal has been determined on a case by case basis on the evidence before the decision-maker, several themes have arisen in appeal decisions, which I discuss below.

The absence of any written evidence

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

- In an appeal decision regarding land off Audlem Road, Stapeley, Nantwich and land off Peter De Stapeleigh Way, Nantwich⁷¹, the Secretary of State removed 301 dwellings from Cheshire East Council’s supply from sites including: “sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement” (paragraph 21 of the decision letter dated 15th July 2020);
- In an appeal decision regarding land to the south of Cox Green Road, Surrey⁷² an Inspector removed 563 dwellings on 24 sites from Waverley Council’s supply because the Council had not provided any evidence for their inclusion (paragraphs 22 to 24 of the appeal decision dated 16th September 2019);
- In an appeal decision regarding land at Station Road, Stalbridge, North Dorset⁷³ an Inspector removed 2 large sites from North Dorset’s supply (references A02 and A04) because the Council had not provided any up to date information from the developers for these sites and applications for reserved matters had not been made (paragraphs 53 and 57); and
- In an appeal decision regarding land within the Westhampnett / North East Strategic Development Location, North of Madgwick Lane, Chichester⁷⁴, an Inspector removed the second phase of a wider site that is under construction on the basis that an application for reserved matters had not been made for phase 2 and the fact that a major housebuilder was progressing phase 1 was not in itself clear evidence (paragraph 82).

⁷¹ PINS refs: 2197532 and 2197529 – core document **M29**

⁷² PINS ref: 3227970 – core document **M30**

⁷³ PINS ref: 3284485 – core document **M31**

⁷⁴ PINS ref: 3270721 – core document **M32**



The most up to date evidence

8.18 Paragraph 68-004 of the PPG⁷⁵ explains that for decision-taking purposes, an authority will need to be able to demonstrate a five year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

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

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

8.20 In an appeal regarding land on the east side of Green Road, Woolpit⁷⁶, the Inspector found Mid Suffolk Council’s approach in publishing its AMR and then retrospectively seeking evidence to justify its position “wholly inadequate”. Paragraph 70 of the appeal decision states:

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

8.21 However, evidence can post date the base date to support the sites in the deliverable supply and not seek to introduce new sites. In an appeal regarding land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands (Milton Keynes)⁷⁷, the Secretary of State agreed with Inspector Gilbert-Woolridge that the latest available evidence should be used when considering deliverability. Paragraph 12 of the Secretary of State’s decision letter dated 25th June 2020 states:

⁷⁵ Paragraph: 004 Reference ID: 68-004-20190722: *“How can an authority demonstrate a 5 year supply of deliverable housing sites?”*

⁷⁶ PINS ref: 3194926 – core document **M26**

⁷⁷ PINS ref: 3169314 – core document **M33**



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

- 8.22 Similarly, in a decision regarding land off Darnhall School Lane, Winsford⁷⁸, the Secretary of State agreed with Inspector Middleton that it is appropriate to take into account information received after the base date if it affects sites included in the deliverable supply⁷⁹.
- 8.23 This means that where sites have not progressed as the Council’s trajectory claimed at the time the position statement was published, the supply should be reduced. In the Audlem Road appeal⁸⁰, the Secretary of State removed from Cheshire East Council’s supply;

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

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

The form and value of the evidence

- 8.25 In the Woburn Sands appeal decision referred to above, the Secretary of State agreed with the Inspector that a proforma can, in principle, provide clear evidence of a site’s deliverability (please see paragraph 12 of the decision letter and paragraphs 12.13 to 12.15 of the Inspector’s Report). However, the evidential value of the written information is dependent on its content. The Secretary of State and Inspectors have concluded that it is simply not sufficient for Councils to provide agreement from landowners and promoters that their intention is to bring sites forward. The evidence needs to provide a realistic prospect that housing will be delivered on the site within five years.
- 8.26 For example, in allowing an appeal for 120 dwellings at land east of Gleneagles Way, Hatfield Peverel⁸¹, the Secretary of State found Braintree Council could not demonstrate a five year housing land supply.

⁷⁸ PINS ref: 2212671 – core document **M34**

⁷⁹ Paragraph 344 of the Inspector’s Report and paragraph 15 of the Decision Letter.

⁸⁰ PINS refs: 2197532 and 2197529 – core document **M29**

⁸¹ PINS ref: 3180729 – core document **M35**



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

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

8.28 The ten removed sites are listed in a table provided at Annex D on page 24 of the Secretary of State’s decision letter. Of the ten sites removed from Braintree’s supply, 9 had outline planning permission and the remaining site was an allocated site with a hybrid planning application pending determination. For these sites, Braintree Council had submitted completed forms and emails from landowners, developers and their agents providing the timescales for the submission of reserved matters applications and anticipated build rates⁸². However, the Secretary of State removed these sites because he did not consider they met the definition of “deliverable” as set out in the Framework.

8.29 As part of its case in seeking to defend an appeal against its decision to refuse to grant outline planning permission for up to 140 no. dwellings at land off Popes Lane, Sturry⁸³, Canterbury City Council claimed that it could demonstrate a 6.72 year supply. For there to be a shortfall in the supply, Canterbury Council claimed that some 1,654 dwellings (out of 6,455 dwellings) would have to be removed from the “deliverable” supply.

8.30 The Inspector, however, found that the Council could not demonstrate a five year housing land supply. The Inspector concluded that the deliverable supply was 4,644 dwellings, which equates to 4.8 years. The reason why the Inspector concluded that the deliverable supply was 1,811 dwellings (28%) less than the Council claimed was because he found that 10 sites should be removed from the supply because:

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

8.31 In this case, Canterbury Council had provided statements of common ground between the Council and the developer or landowner to support the inclusion of several of the disputed sites. However, the Inspector

⁸² Appendix EP2

⁸³ PINS ref: 3216104 – core document M36



found that the statements of common ground did not demonstrate that the development prospect was realistic. Paragraph 23 of the appeal decision states:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer’s or landowner’s stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.”

8.32 Similarly, as part of its case in seeking to defend an appeal made by Parkes Ltd against its decision to refuse to grant outline planning permission for up to 53 dwellings at land to the south of Cox Green Road, Rudgwick⁸⁴, Waverley Council claimed it could demonstrate a supply of 5,708 dwellings, which equated to just under 5.2 years against its housing requirement and buffer.

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

8.34 In an appeal decision dated 25th August 2022 regarding an appeal made by Salter Property Investments Ltd against the decision of Exeter City Council to refuse to grant outline planning permission for up to 93 dwellings at land off Spruce Close, Exeter⁸⁵, the Inspector found:

- The pro-formas used by Exeter were undated, unsigned and deficient (paragraph 39);
- That 2 sites with outline planning permission and no reserved matters applications pending, and no clear evidence for their inclusion should be removed (paragraphs 40 and 41); and

⁸⁴ PINS ref: 3227970 – core document **M30**

⁸⁵ PINS ref: 3292721 – core document **M32**



- That even where reserved matters application had been made, where those applications are subject to outstanding objections and there is no written agreement with the developer, the sites should not be included because no clear evidence had been provided (paragraphs 42 and 43).

8.35 I now refer to two appeal decisions in Oxfordshire where the definition of “deliverable” and “clear evidence” were considered.

Little Sparrows, Sonning Common (South Oxfordshire) Appeal Decision

8.36 At the time the South Oxfordshire Local Plan was examined, the Council’s 5YHLS position at 1st April 2020 was that it could demonstrate a 5.35 year supply. These claims were tested soon after the Local Plan was examined at an inquiry in relation to an appeal regarding Little Sparrows, Sonning Common⁸⁶. In that case, the Inspector concluded that the Council could only demonstrate a 4.21 year supply.

8.37 Paragraph 18 of the appeal decision explains that at the inquiry, the Council’s case had fallen to 5.08 years. The Council’s case at that time was that it could demonstrate a deliverable 5YHLS of 5,785 dwellings and the Appellant’s case was that it could demonstrate a deliverable 5YHLS of 4,789 dwellings. The difference between the two positions was 996 dwellings on 15 sites as set out in table 3 the SoCG for that case as referred to in paragraph 19 of the appeal decision.

8.38 Paragraphs 20 and 21 of the appeal decision then state:

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

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

This 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.

21. 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-

⁸⁶ PINS ref: 3265861 – core document M38



forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward. (my emphasis)

8.39 This is relevant because in that case the Council had submitted emails from those promoting sites⁸⁷. However, the Inspector in that case found that such emails were not clear evidence as set out in the paragraphs above.

8.40 Paragraph 22 of the appeal decision then stated:

"It is not necessary for me to go through all of the disputed sites in Table 3 of SoCG 5. **In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position.** For example, the Council suggests that 100 dwellings would be delivered at Site 1561: Land to the south of Newham Manor, Crowmarsh Gifford whereas the Appellant says 100 dwellings should be deducted. The comments set out by the Appellant for this site in Table 3 are compelling. Similarly, at Site 1009: Land to the north east of Didcot, the Council suggests 152 dwellings would be delivered whereas the Appellant says 152 dwellings should be deducted. The Appellant provides cogent evidence to support its case. Furthermore, at Site 1418: Land at Wheatley Campus, the Council agrees a deduction but only of 62 dwellings whereas the Appellant says the deduction should be 230. **There is no clear evidence before me that would suggest that these sites or indeed most of the disputed sites would deliver the completions suggested by the Council in the next five years"** (my emphasis)

8.41 Paragraph 23 of the appeal decision states:

"Overall, I consider that the Appellant's assessment of supply set out in Table 2 of SoCG 5 is more realistic taking into account the test of deliverability set out in Appendix 2 to the NPPF and the PPG advice published on 22 July 2019. I am satisfied that the Appellant's approach is consistent with national policy, case law, appeal decisions and informed by current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times"

8.42 Finally, paragraph 25 of the appeal decision states:

"I consider that the Council's supply figure should be reduced to reflect the Appellant's position set out in Table 2 of SoCG 5. The Council's supply figure of 5,785 dwellings in Table 2 should be reduced to give a more robust total supply figure of 4,789 dwellings for the five year period. Although the Council maintains there is a 5.08 year supply, the evidence that is before me indicates a housing land supply equivalent to 4.21 years.

⁸⁷ Appendix EP3



The implications of not having a five-year housing land supply are significant. Not only is there a shortfall, but it also means most important policies for determining the application are automatically out-of-date. The Council accepts that means all the policies in the SOLP and the SCNP are out-of-date. It also means if the paragraph 172 tests in the NPPF are satisfied then the tilted balance applies.”

Land west of Wroslyn Road, Freeland (West Oxfordshire) appeal decision⁸⁸

8.43 In this case, West Oxfordshire accepted that it could not demonstrate a deliverable 5YHLS. However, the extent of the shortfall was not agreed. My evidence on behalf of the Appellant in that case was that 1,691 dwellings should be removed from West Oxfordshire’s 5YHLS. The Inspector found that the figure the 5YHLS was closer to my position of 2.5 years rather than the Council’s figure of 4.1 years (paragraph 59).

8.44 Paragraphs 50 to 57 of the appeal decision set out the Inspector’s findings on the disputed sites in that case. For the disputed sites, West Oxfordshire had provided emails and proformas to support the inclusion of the sites⁸⁹. However, the Inspector concluded that this was not “clear evidence” and removed the sites from the deliverable supply.

Annual Position Statements

8.45 Few authorities choose to have their 5YHLS confirmed through the Annual Position Statement (APS) route. South Kesteven submitted its APS for examination in July 2022. It claimed that at 1st April it had a deliverable supply of 4,770 dwellings, which equated to 6.1 years. Whilst Inspector John Felgate found the Council could demonstrate a 5YHLS, he removed 693 dwellings from 10 sites in the Council’s claimed supply and concluded the supply equated to 5.2 years.

8.46 Of the 10 sites, the Inspector reduced the number of dwellings that should be included in the 5YHLS on four sites and concluded that six sites should be removed from South Kesteven’s claimed supply. This was because the Council had not provided clear evidence for their inclusion and therefore these sites did not meet the definition of “deliverable”. Whilst the Council had provided “Housing Deliverability Forms” and emails provided by those promoting sites⁹⁰, which included information such as when applications were going to be made and when a start on site could be expected, the Inspector found it was not clear evidence and removed the sites. The six removed sites were:

- APS007(S) Bridge End Road, Grantham (120 dwellings);

⁸⁸ PINS ref: 3301202 – core document **M39**

⁸⁹ Appendix **EP4**

⁹⁰ Appendix **EP5**



- APS011(S) Grantham Church High School, Queensway (40 dwellings);
- APS041 Main Road (South), Long Bennington (10 dwellings);
- APS043 Thistleton Lane/Mill Lane, South Witham (24 dwellings);
- APS045 Towngate West, Market Deeping (73 dwellings); and
- APS063(S) Land at Brittain Drive, Grantham (16 dwellings).

8.47 In summary, the above appeal decisions and APS Inspector found that sites with outline planning permission for major development and allocated sites without planning permission should not be included in the deliverable supply where the respective Councils had failed to provide the clear evidence required. In some cases those Councils had provided proformas and other evidence from those promoting sites, and Inspectors and the Secretary of State found this not to be clear evidence.

8.48 I now discuss the disputed sites in Cherwell as follows.



9. Sites without planning permission at the base date

9.1 The Council's five year supply includes 170 dwellings on 3 sites without planning permission at the base date which I dispute, as follows.

Table 9.1 – Disputed sites without planning permission

| LPA ref: | Address | Capacity (Net) | LPA 5YHLS | Appellant 5YHLS | Difference |
|--------------|--|----------------|------------|-----------------|-------------|
| Bicester 12 | South East Bicester (Wretchwick Green) | 1,500 | 50 | 0 | -50 |
| 15/01357/F | Former RAF Upper Heyford | 89 | 89 | 0 | -89 |
| 21/03523/OUT | Former RAF Upper Heyford | 31 | 31 | 0 | -31 |
| | | Total | 170 | 0 | -170 |

9.2 I discuss these sites as follows.

Bicester 12 – South East Bicester (Wretchwick Green)

Capacity = 1,500 dwellings, Council's 5YHLS = 50 dwellings

Background

9.3 This very large site is around 155 ha in area. It is allocated in the Cherwell Local Plan under policy Bicester 12 (pages 168-171) for mixed use including 40 ha of employment land and 1,500 homes.

9.4 At the base date, the site did not have planning permission. An outline planning application for up to 1,500 dwellings, up to 7ha of B1 employment land, a local centre with retail and community uses and a primary school had been submitted in June 2016. Whilst a resolution to grant permission had been made in October 2018, the S106 had not been signed and therefore the decision notice had not been issued.

9.5 The trajectory in the adopted Local Plan claimed that residential development would start in 2016/17 and be complete by 2026/27. The trajectory in the adopted Local Plan is out of date. Construction has not commenced.



9.6 In each of the Council's 5YHLS trajectories, development has been expected within the respective 5YHLS periods, only for that to be pushed back the next time a trajectory is published. This is shown in the following table.

Table 9.2 – Delivery trajectories for South East Bicester

| Source | 14/15 | 15/16 | 16/17 | 17/18 | 18/19 | 19/20 | 20/21 | 21/22 | 22/23 | 23/24 | 24/25 | 25/26 | 26/27 |
|------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Local Plan | 0 | 0 | 50 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 |
| AMR 2015 | 0 | 0 | → | 50 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 |
| AMR 2016 | 0 | 0 | → | → | → | 25 | 150 | 200 | 200 | 200 | 200 | 200 | 150 |
| AMR 2017 | 0 | 0 | → | → | → | 25 | 150 | 200 | 200 | 200 | 200 | 200 | 150 |
| AMR 2018 | 0 | 0 | → | → | → | → | 50 | 150 | 200 | 200 | 200 | 200 | 200 |
| AMR 2019 | 0 | 0 | → | → | → | → | → | → | 50 | 100 | 150 | 200 | 200 |
| AMR 2020 | 0 | 0 | → | → | → | → | → | → | → | 50 | 100 | 150 | 150 |
| AMR 2021 | 0 | 0 | → | → | → | → | → | → | → | → | 50 | 100 | 150 |

9.7 The Council's own trajectory set out in the HLSS now only considers that 450 dwellings will be delivered in the plan period to 2031; a shortfall of 1,050 dwellings. This relies on 50 dwellings being built in 2026/27.

Current planning status?

9.8 On 28th June 2016, an outline planning application was submitted for the following:

“Outline application with all matters reserved apart from access for residential development including up to 1,500 dwellings, up to 7ha of employment land for B1 and/ or B8 uses, a local centre with retail and community use to include A1 and/ or A2 and/ or A3 and/ or A4 and/ or A5 and/ or D1 and/ or D2 and/ or B1, up to a 3 Form Entry Primary School, drainage works including engineering operations to re-profile the land and primary access points from the A41 and A4421, pedestrian and cycle access,



circulation routes, related highway works; car parking; public open space and green infrastructure and sustainable drainage systems”

9.9 Outline planning permission was eventually approved after the base date on 20th May 2022 (ref: 16/01268/OUT), almost 6 years later. It took 3.5 years from the resolution to grant permission in October 2018 to the decision notice being issued.

9.10 The outline planning permission is subject to a series of pre-commencement conditions⁹¹.

9.11 Condition 9 of the outline planning permission states:

“Prior to the submission of the first reserved matters, a phasing plan covering the entire application site shall be submitted to and approved in writing by the Local Planning Authority.

Thereafter the development shall be carried out in accordance with the approved phasing plan and reserved matters applications shall only be submitted in accordance with the approved phasing plan and refer to the phase (or sub-phase) they relate to unless an alternative phasing plan has subsequently been submitted to and approved in writing by the Local Planning Authority under the terms of this condition”.

9.12 An application to discharge this condition has not been made. Therefore, it is not clear what the first phase or the first reserved matters application will be for.

9.13 On 1st July 2022, an application was validated to discharge condition 10 of the outline planning permission relating to the masterplan and design code (LPA ref: 22/01978/DISC). That application is still pending determination over 15 months later. The Environment Agency commented in September 2022 and have an outstanding objection in relation to ecological buffer zones⁹².

9.14 On 31st August 2022, an application was validated to discharge the following conditions (LPA ref: 22/02559/DISC):

“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) & 28 (Ecological Buffer Zone) of 16/01268/OUT”

⁹¹ Appendix **EP6A** – outline planning permission for Bicester 12

⁹² Appendix **EP6B** – Environment Agency comments re design code at Bicester 12



9.15 That application was withdrawn in November 2022. Nevertheless, the Environment Agency commented in December 2022 to explain that they could not support the application⁹³.

Firm progress being made towards the submission of an application?

9.16 The Council has provided no clear evidence of firm progress being made to demonstrate that firm progress is being made towards the submission of a reserved matters application. The Council’s 5YHLS statement simply states:

“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” (my emphasis)

9.17 I note that the Council considers this is a “developable” site, yet it includes 50 dwellings in the deliverable 5YHLS in year 5 (2026/27).

9.18 The Council’s evidence at the time of the Firethorn appeal was as follows:

“outline planning permission in place for allocated site. Discharge of Conditions applications in progress with active engagement to reach agreement with landowners and way forward on highways and drainage

Council advised RM application expected Summer 2023. No delivery forecast until year 5 (2026/27)

Pioneer Roundabout now constructed

Legal agreement signed spring 2022”

9.19 This is not clear evidence. The application to discharge conditions was withdrawn. A reserved matters application was not submitted in summer 2023.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

9.20 A written agreement between the LPA and the developer has not been provided.

Firm progress with site assessment work?

9.21 No clear evidence of firm progress with site assessment work has been provided.

⁹³ Appendix EP6C – Environment Agency’s response to the discharge of conditions



9.22 As above, the application to discharge some of the conditions was withdrawn in November 2022 and the application to discharge the design code has still not been approved.

Clear relevant information about viability, ownership constraints or infrastructure provision?

9.23 No clear relevant information on any of these issues has been provided. Given the size of the site, the provision of key infrastructure is an important consideration in relation to the delivery / deliverability of this site.

Summary

9.24 This very large site only has outline planning permission. No applications for reserved have been made to date and a written agreement from the developer has not been provided.

9.25 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application. Whilst an application to discharge the condition relating to the design code / masterplan has been submitted, this has been pending determination for over a year. An application for reserved matters cannot be made until a phasing plan has been approved but an application to discharge that condition has not been made.

9.26 The Council has not provided “clear evidence that housing completions will begin on site within five years”. The site therefore fails to meet the definition of “deliverable” as set out on page 67 of the Framework and should be removed from the supply. This results in a reduction of **50 dwellings** from the Council’s supply.

15/01357/F – Former RAF, Upper Heyford

Capacity = 89 dwellings, Council’s 5YHLS = 89 dwellings

9.27 This is part of a very large site known as Heyford Park. At the base date, this part of the site did not have planning permission. A full planning application for 89 dwellings was submitted on 20 July 2015, which was validated on 24th September 2021 and was pending determination at the base date.

Current planning status?

9.28 A full planning application for 89 dwellings was submitted by Pye Homes on 20 July 2015 (ref: 15/01357/F). The application was determined at planning committee on 13 January 2022 where it was recommended for approval subject to the signing of a Section 106 agreement. The S106 was finally signed and a decision issued on 14 September 2023, over 8 years after the application was submitted.



9.29 However, a revised planning application for 126 dwellings was submitted by David Wilson Homes on 06 October 2022 and is pending determination (ref: 22/03063/F). Paragraph 1.6 of the submitted planning statement states that:

“The Applicant [David Wilson Homes] is in the process of acquiring the entire site and is seeking to develop the land with a single comprehensively planned residential development.”

9.30 This application encompasses both this entry in the supply and the entry discussed below.

9.31 Therefore, the permission for 89 dwellings is not going to be implemented.

9.32 The pending application for 126 dwellings is subject to a number of objections/requested amendments, as follows:

- Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (16 November 2022) – objection on the basis of no evidence of BNG provided, loss of/damage to hedgerow priority habitat, lighting issues, GCN district license required.
- Thames Valley Police (16 November 2022) – a number of amendments requested.
- Ecology (14 December 2022) – Great Crested Newts mitigation required – District license needs to be provided and authorised; BNG – no metric has been carried out to demonstrate BNG.

9.33 No updated reports on these matters have been provided to date.

Firm progress being made towards the submission of an application?

9.34 As above, a full planning application for 126 dwellings has been pending determination for almost 1 year. It is unknown when the application will be determined.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

9.35 No written agreement between the LPA and the developer has been provided. The Council’s position statement simply states:

“A full application for 89 homes on a greenfield site within the strategic allocation by Pye Homes was approved subject to legal agreement on 13 January 2022 discussions are ongoing and are likely to be resolved allowing the site to come forward.”

9.36 Whilst the S106 has been signed, Pye Homes will no longer be developing the site. As set out above, the site is in the process of being sold to David Wilson Homes. No written agreement between David Wilson Homes and the Council has been provided.



Firm progress with site assessment work?

- 9.37 No clear evidence of firm progress with the site assessment work has been provided. This is not surprising because the decision notice has still not been issued.

Clear relevant information about viability, ownership constraints or infrastructure provision?

- 9.38 No evidence has been provided. Given this site forms part of the overall Heyford Park development, the infrastructure provision for this part of the site is clearly relevant in terms of assessing deliverability.

Summary

- 9.39 The site did not have planning permission at the base date. Whilst full permission has now been granted, this consent is no longer planned for implementation and the site is being sold. A revised full planning application for 126 dwellings has been pending determination for almost 1 year. The submitted application documents confirm that David Wilson Homes is in the process of acquiring the entire site and is seeking to develop the land with a single comprehensively planned residential development. However, the site does not have planning permission.
- 9.40 Therefore, the Council has not provided any “clear evidence” of the type referred to in paragraph 68-007 of the PPG that housing completions will begin on the site within the next five years. The evidence that it has provided is not “clear evidence that housing completions will begin on site within five years. The site fails to meet the definition of “deliverable” as set out on page 66 of the Framework and should be removed from the supply. This results in a reduction of **89 dwellings** from the Council’s supply.

21/03523/OUT – Former RAF, Upper Heyford

Capacity = 31 dwellings, Council’s 5YHLS = 31 dwellings

- 9.41 This site also forms part of the larger site known as Heyford Park, discussed above. At the base date, the site did not have planning permission. An outline planning application for 31 dwellings was submitted in October 2021 and was pending determination at the base date.

Current planning status?

- 9.42 An outline planning application for 31 dwellings was submitted by Pye Homes on 14 October 2021 and is still pending determination (ref: 21/03523/OUT). The application was heard at planning committee on 10 March 2022 where it was recommended for approval subject to the signing of a Section 106 agreement. The S106 was finally signed and a decision issued on 14 September 2022, almost 2 years after the application was submitted.



9.43 No reserved matters applications have been submitted to date.

9.44 A revised planning application for 126 dwellings was submitted by David Wilson Homes on 06 October 2022 and is pending determination (ref: 22/03063/F). Paragraph 1.6 of the submitted planning statement states that:

“The Applicant [David Wilson Homes] is in the process of acquiring the entire site and is seeking to develop the land with a single comprehensively planned residential development.”

9.45 This application encompasses both this entry in the supply and the entry discussed above.

9.46 Therefore, the outline consent is no longer planned for implementation.

9.47 The pending application for 126 dwellings is subject to a number of objections/requested amendments, as follows:

- Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (16 November 2022) – objection on the basis of no evidence of BNG provided, loss of/damage to hedgerow priority habitat, lighting issues, GCN district license required.
- Thames Valley Police (16 November 2022) – a number of amendments requested.
- Ecology (14 December 2022) – Great Crested Newts mitigation required – District license needs to be provided and authorised; BNG – no metric has been carried out to demonstrate BNG.

9.48 No updated reports on these matters have been provided to date.

Firm progress being made towards the submission of an application?

9.49 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

9.50 No written agreement between the LPA and the developer has been provided. The Council’s 5YHLS position statement simply states:

“An outline application for 31 homes on land within the allocation as part of a potential development area by Pye Homes was approved subject to legal agreement on 10 March 2022. The expected delivery rates allow sufficient lead-in time for Outline and Reserved Matters approvals and construction time”



9.51 However, Pye Homes will no longer be developing the site. As set out above, the site is in the process of being sold to David Wilson Homes. No written agreement between David Wilson Homes and the Council has been provided.

Firm progress with site assessment work?

9.52 No clear evidence of firm progress with any site assessment work has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

9.53 No evidence has been provided. Given this site forms part of the overall Heyford Park development, the infrastructure provision for this part of the site is clearly relevant in terms of assessing deliverability.

Summary

9.54 The site did not have planning permission at the base date. Whilst an outline planning application has been granted, this consent is no longer planned for implementation and the site is being sold.

9.55 A revised full planning application for 126 dwellings has been pending determination for almost 1 year. The submitted application documents confirm that David Wilson Homes is in the process of acquiring the entire site and is seeking to develop the land with a single comprehensively planned residential development. However, the site does not have planning permission.

9.56 Therefore, the Council has not provided any “clear evidence that housing completions will begin on site within five years”. The site fails to meet the definition of “deliverable” as set out on page 66 of the Framework and should be removed from the supply. This results in a reduction of **31 dwellings** from the Council’s supply.



10. Sites with outline planning permission

10.1 The Council's five year supply includes 510 dwellings on 4 sites with outline planning permission at the base date which I dispute, as follows.

Table 10.1 – Disputed sites with outline planning permission

| LPA ref: | Address | Capacity (Net) | LPA 5YHLS | Appellant 5YHLS | Difference |
|-------------|---|----------------|------------|-----------------|-------------|
| Banbury 17 | South of Salt Way | 1,000 | 350 | 237 | -113 |
| Bicester 1 | North West Bicester Phase 2 | 500 | 20 | 0 | -20 |
| Bicester 10 | Bicester Gateway Business Park, Wendlebury Road | 273 | 80 | 0 | -80 |
| Bicester 3 | South West Bicester Phase 2 | 60 | 60 | 0 | -60 |
| | | Total | 510 | 237 | -273 |



Banbury 17 – South of Salt Way – East

Capacity = 1,000 dwellings, Council's 5YHLS = 350 dwellings

10.2 This large site forms part of a wider allocation in the Local Plan of 68 ha.

10.3 The Council's 5YHLS trajectory in the HLSS for this site is as follows:

| Year 1 2022/23 | Year 2 2023/24 | Year 3 2024/25 | Year 4 2025/26 | Year 5 2026/27 | Total 5YHLS |
|-------------------|-------------------|-------------------|-------------------|-------------------|-------------|
| 0 | 0 | 50 | 100 | 200 | 350 |

10.4 At the base date, the site had outline planning permission for:

“Development of up to 1,000 dwellings together with a mixed use local centre [including A1 retail up to 1,000 m2, financial services (A2), restaurants, pubs and takeaways (A3, A4, A5), community uses (D1)]; primary school and safeguarded additional primary school land; secondary school playing field land; green infrastructure including formal (including playing fields) and informal open space, landscape and amenity space; changing and sports facilities (including D2); sustainable drainage systems; highway, cycle and pedestrian routes; car parking; infrastructure (including utilities); engineering works including ground remodelling; demolition, site reclamation and removal of structures. Formation of a new roundabout access from the A361 together with associated alterations to alignment of Bloxham Road and provision of a section of link road through the site up to its eastern-most boundary.”

10.5 The outline planning permission requires the submission of reserved matters within 8 years of the approval (i.e. by 19th December 2027).

Current planning status?

10.6 An outline planning application for up to 1,000 dwellings was submitted on 17th November 2014 and approved on 19 December 2019 (ref: 14/01932/OUT).

10.7 A reserved matters application for 237 dwellings was submitted by Persimmon Homes on 11th July 2022 and was approved on 20th April 2023 (ref: 22/02068/REM). No other reserved matters applications have been submitted.



Firm progress being made towards the submission of an application?

10.8 As above, a reserved matters application for part of the site has been approved. No clear evidence of firm progress being made towards the submission of other reserved matters applications has been provided.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

10.9 The Council's statement states 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.”

10.10 However, no written agreement with a developer has been provided.

Firm progress with site assessment work?

10.11 No clear evidence of firm progress on site assessment work has been provided. Whilst some site assessment work has been undertaken as part of the recently approved reserved matters application, many of the conditions on the outline planning permission have not been discharged.

Clear relevant information about viability, ownership constraints or infrastructure provision?

10.12 Reserved matters consent has been granted for a spine road to serve the development. No information has been provided regarding viability or ownership constraints.

Summary

10.13 The site has outline planning permission for up to 1,000 dwellings and detailed consent for 237 dwellings. No clear evidence of firm progress towards the submission of any other reserved matters applications has been provided.

10.14 Therefore, the Council has not provided any “clear evidence that housing completions will begin on site within five years. The site fails to meet the definition of “deliverable” as set out on page 66 of the Framework and should be removed from the supply. This results in a deduction of **113 dwellings** from the Council's supply.



Bicester 1 – North West Bicester Phase 2

Capacity = 500 dwellings, Council's 5YHLS = 20 dwellings

10.15 At the base date, the site had outline planning permission for 1,700 dwellings. A reserved matters application for 500 dwellings was submitted on 05 July 2021 and was pending determination at the base date.

Current planning status?

10.16 An outline planning application for 1,700 dwellings was submitted on 19 December 2014 and approved on 30 January 2020 (ref: 14/02121/OUT). A reserved matters application for 500 dwellings was submitted on 05 July 2021 however the application was withdrawn on 03 November 2022 (ref: 21/02339/REM).

10.17A reserved matters application for 123 dwellings was submitted on 09 June 2023 and is pending determination (ref: 23/01586/REM). The application is subject to objections from statutory consultees as follows:

- Environment Agency comment (dated 31 August 2023) - detailed information regarding the hydrological and hydro-geological context of the development needs to be provided.
- Oxfordshire County Council objection (dated 27 July 2023) - Layout relative to spine roads will need to be reviewed because of changes needed to those roads to provide cycle facilities on both sides; amount of car parking is in excess of Oxfordshire Parking Standards; amount of cycle parking is insufficient to meet Oxfordshire Parking Standards; and improvements needed to maximise cycle and pedestrian connectivity.
- Thames Valley Police holding objection (dated 21 July 2023) – “have some concerns with the proposals in terms of the potential for crime and disorder, and for that reason I am unable to support this application in its current form.” – multiple amendments required.

10.18 It is unknown whether these outstanding issues will be resolved.

10.19 Two identical reserved matters applications for Phase 1A infrastructure comprising two junctions and two sections of internal road were submitted on 23 and 24 January 2023 and are still pending determination (refs: 23/00214/REM and 23/00170/REM). The applications are subject to an objection from Oxfordshire County Council (dated 01 March 2023) on the basis that the secondary access is insufficiently wide. No revised plans have been submitted to date. It is unknown whether this outstanding issue will be addressed.

Firm progress being made towards the submission of an application?

10.20 As above, a reserved matters application is pending determination subject to a number of objections.



Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

10.21 No written agreement with the developer has been provided.

Firm progress with site assessment work?

10.22 No clear evidence of firm progress with site assessment work has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

10.23 The Council's evidence 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.**" (Emphasis added)

10.24 Therefore, the Council's own evidence is this site is not considered deliverable.

Summary

10.25 The site has outline planning permission for up to 1,700 dwellings. Whilst a reserved matters application for 500 dwellings was made in July 2021, the application was subsequently withdrawn. A revised reserved matters application for 123 dwellings was submitted in June 2023 and is pending determination. However, the application is subject to a number of outstanding objections. It is unknown whether the application will be approved.

10.26 The Council's own evidence states that the site does not meet the definition of deliverable.

10.27 Therefore, the Council has not provided any "clear evidence that housing completions will begin on site within five years. The site fails to meet the definition of "deliverable" as set out on page 66 of the Framework and should be removed from the supply. This results in a reduction of **20 dwellings** from the Council's supply.



Bicester 10 – Bicester Gateway Business Park, Wendlebury Road, Chesterton

Capacity = 273 dwellings, Council's 5YHLS = 80 dwellings

10.28 At the base date, the site had outline planning permission for:

“Outline application (Phase 1B) including access (all other matters reserved) for up to 4,413 sqm B1 office space (47,502 sqft) GIA, up to 273 residential units (Use Class C3) including ancillary gym, approximately 177 sqm GIA of café space (Use Class A3), with an ancillary, mixed use co-working hub (794 sqm/ 8,550 sqft GIA), multi-storey car park, multi-use games area (MUGA), amenity space, associated infrastructure, parking and marketing boards”

10.29 The application had been approved on 10th April 2021 (LPA ref: 20/00293/OUT). No reserved matters applications had been made at the base date.

Current planning status?

10.30 Since the base date, a reserved matters application for Class E units was approved on 11th November 2022 (ref: 22/02025/REM). No further reserved matters applications have been made to date.

Firm progress being made towards the submission of an application?

10.31 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application for residential development. The HLSS states that:

“Bloomridge plan to submit a full residential application on the site in Q2 2023.”

10.32 However, no evidence has been provided to support this and an application was not made.

10.33 The Council's evidence for the Firethorn appeal was as follows:

“There has been progress with delivery expectations including:

Outline planning permission in place for allocated site. Reserved matters applied for in respect of employment (knowledge cluster) elements (22/02025/REM)

21/02723/OUT – planning permission for variation of condition to remove co-working hub – planning permission granted 12 October 2021. Will de-link the delivery of the hub and residential development allowing for faster delivery.

Thomas Homes identified as developer for residential elements”

10.34 This is not clear evidence of deliverability.



Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

10.35 No clear evidence has been provided.

10.36 However, the owner of the site (Thomas Homes) has explained that they do not intend to progress a residential application at the site in the short to medium term due to viability. The email⁹⁴ states:

“I can confirm that Thomas Homes owns the Bicester Gateway site.

We have been pursuing a detailed residential application on the site and have just gone through the pre-app process. As a result of this we have concluded that in the short and medium term a residential development on the site will not be viable.

As a result of this we are working with commercial developer to bring forward a scheme in line with the existing commercial consent.”

Firm progress with site assessment work?

10.37 No clear evidence of any firm progress with site assessment work in relation to the residential element has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

10.38 No evidence has been provided.

Summary

10.39 The site has outline planning permission for 273 dwellings. No reserved matters applications in respect of residential development have been made to date. There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application.

10.40 Therefore, the Council has not provided “clear evidence that housing completions will begin on site within five years. The site fails to meet the definition of “deliverable” as set out on page 66 of the Framework and should be removed from the supply. This results in a reduction of **80 dwellings** from the Council’s supply.

⁹⁴ Appendix EP7



Bicester 3 – South West Bicester Phase 2

Capacity = 60 dwellings, Council's 5YHLS = 60 dwellings

10.41 On 30th May 2017, outline planning permission was granted for:

“Residential development within use Class C3, Extra care facility, primary school, retail, formal and informal public open space, play facilities, sports pitches, allotments and associated infrastructure including landscaping, highways, footpaths/cycleways, drainage utilities and parking”

10.42 Condition 10 explains that the permission is for up to 709 dwellings. The disputed part of the site relates to 60 dwellings to be delivered as part of an extra care facility.

10.43 Condition 2 of the outline planning permission requires the submission of the first reserved matters application within 2 years of the permission and the remaining reserved matters within 8 years (i.e. by 30th May 2025).

Current planning status?

10.44 Outline planning permission for 709 dwellings was granted on 30 May 2015. The following reserved matters applications have been approved for 649 dwellings:

- 18/01777/REM - RM for 176 approved 01 March 2019
- 18/00647/REM - RM 247 dwellings approved 16 Oct 2018
- 19/02225/REM - RM 226 dwellings approved 16 March 2020

10.45 The HLSS states that there are 60 dwellings remaining with outline planning permission. No further reserved matters applications have been made to date.

Firm progress being made towards the submission of an application?

10.46 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

10.47 No clear evidence has been provided.



Firm progress with site assessment work?

10.48 No clear evidence of firm progress with any site assessment work has been provided for the extra care facility.

Clear relevant information about viability, ownership constraints or infrastructure provision?

10.49 No evidence has been provided.

Summary

10.50 The wider site has outline planning permission for 709 dwellings, of which 649 dwellings have reserved matters consent and are under construction. Therefore, 60 dwellings remain with outline planning permission. No reserved matters applications in respect of the remaining dwellings have been submitted to date. There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application.

10.51 Therefore, the Council has not provided “clear evidence that housing completions will begin on site within five years”. The site fails to meet the definition of “deliverable” as set out on page 67 of the Framework and should be removed from the supply. This results in a reduction of **60 dwellings** from the Council’s supply.



11. Partial Review sites

11.1 The Council's five year supply includes 80 dwellings on 3 sites without planning permission at the base date which I dispute, as follows.

Table 11.1– Disputed Partial review sites without planning permission at the base date

| LPA ref: | Address | Capacity (Net) | LPA 5YHLS | Appellant 5YHLS | Difference |
|----------|-------------------------------------|----------------|-----------|-----------------|------------|
| PR9 | Land west of Yarnton | 540 | 30 | 0 | -30 |
| PR7a | Land southeast of Kidlington | 430 | 30 | 0 | -30 |
| PR7b | Land at Stratfield Farm, Kidlington | 120 | 20 | 0 | -20 |
| | | Total | 80 | 0 | -80 |

11.2 I discuss these sites as follows.



PR9 – Land west of Yarnton

Capacity = 540 dwellings, Council's 5YHLS = 30 dwellings

11.3 At the base date, the site did not have planning permission. An outline planning application for up to 540 dwellings was submitted on 14 October 2021 and was pending determination at the base date.

Current planning status?

11.4 An outline planning application for up to 540 dwellings was submitted on 14 October 2021 (ref: 21/03522/OUT) and is still pending determination, 2 years later. The application is subject to a number of objections from statutory consultees, summarised as follows:

- Ecology comment dated 11 April 2023: There are some issues arising as a result of the relatively preliminary stage of the information submitted on habitats and the use of the site which need addressing prior to determination.
- Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust objection dated 23 January 2023: Objection due to recreational impact on Begbrook Wood LWS and Frogwelldown District Wildlife Site; impact on farmland and birds; the need to provide BNG in perpetuity; and the hydrological impact on Oxford Meadows SAC and Cassington to Yarnton gravelpits LWS.
- Thames Valley Police objection dated 10 January 2023: Issues of crime prevention and public safety have not been addressed.

11.5 It is unknown whether the above issues will be addressed.

Firm progress being made towards the submission of an application?

11.6 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application. This is not surprising given that the outline application has not yet been determined. It is not known when the outline planning application is to be determined or how long the S106 agreement will take to sign.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.7 A written agreement between the LPA and the developer confirming the anticipated start and build out rates has not been provided.

Firm progress with site assessment work?

11.8 No clear evidence of firm progress with any site assessment work has been provided.



Clear relevant information about viability, ownership constraints or infrastructure provision?

11.9 No evidence has been provided.

Summary

11.10 The site does not have planning permission. An outline planning application for up to 540 dwellings has been pending determination for 2 years. It is unknown when the application will be determined and when the S106 agreement will be signed. Even if approved, a reserved matters application would still need to be submitted to and approved by the Council and no clear evidence has been provided to demonstrate when this will be or what it will be for.

11.11 Therefore, the Council has not provided “clear evidence that housing completions will begin on site within five years”. The site fails to meet the definition of “deliverable” as set out on page 67 of the Framework and should be removed from the supply. This results in a deduction of **30 dwellings** from the Council’s supply.

PR7a – Land southeast of Kidlington

Capacity = 430 dwellings, Council’s 5YHLS = 30 dwellings

11.12 The site does not have planning permission. An outline planning application for up to 370 dwellings was submitted on 11 March 2022 and is pending determination.

Current planning status?

11.13 An outline planning application for up to 370 dwellings was submitted on 11 March 2022 and is still pending determination, over 1.5 years later (ref: 22/00747/OUT).

- Kidlington Parish Council objection dated 06 June 2023: transport strategy falls short – walking and cycling facilities are inadequate and do not meet current guidance; sustainability measures such as nesting boxes, green roofs have not been provided; no noise survey or environmental survey has been provided; playing field provision is inadequate.
- Active Travel England comment dated 28 July 2023: the transport assessment does not provide a qualitative assessment of the walking and cycling provision in the area. The existing highway infrastructure along Bicester Road is not suitable due to its lack of width and segregation – new pedestrian and cycling facilities need to be provided.
- Sport England objection dated 26 January 2023: the area of land being put forward for a football hub is not sufficient. Written confirmation that additional land will be provided is required in order to overcome this objection.

11.14 It is unknown how and when the above issues are to be addressed.



Firm progress being made towards the submission of an application?

11.15 There is no clear evidence of firm progress being made towards the submission of a reserved matters application. This is not surprising given that the outline application has not yet been determined.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.16 No evidence has been provided.

Firm progress with site assessment work?

11.17 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.18 No evidence has been provided.

Summary

11.19 Even if approved, a reserved matters application would still need to be submitted to and approved by the Council and no clear evidence has been provided to demonstrate when this will be or what it will be for.

11.20 Therefore, the Council has not provided “clear evidence that housing completions will begin on site within five years”. The site fails to meet the definition of “deliverable” as set out on page 67 of the Framework and should be removed from the supply. This results in a reduction of **30 dwellings** from the Council’s supply.

PR7b – Land at Stratfield Farm, Kidlington

Capacity = 120 dwellings, Council’s 5YHLS = 20 dwellings

11.21 At the base date, the site did not have planning permission, nor had an application been made.

Current planning status?

11.22 An outline planning application for up to 118 dwellings was submitted on 30 May 2022 and is still pending determination, almost 1.5 years later (ref: 22/01611/OUT).

- Ecology comment dated 24 May 2023: no bird survey has been carried out; no information on impacts on otters or water voles has been provided; measures should be outline to ensure that Stratfield Brake District Wildlife Site has the resources and protection to deal with the additional recreational pressure that will result from the development; the site is within the



red zone for GCN but a survey has not been carried out for over 3 years – updated surveys are required.

- Kidlington Parish Council objection dated 15 August 2022: overall number of dwellings exceeds the allocation; concerns re: the safety of the singular vehicular access to the site; concerns that the traffic generated has not been assessed in the context of the other allocated sites.
- Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust objection dated 25 July 2022: application does not provide adequate evidence of protection and enhancement of existing habitats and creation of new habitats; no evidence that the application includes proposals to secure the area for nature conservation in perpetuity; unclear what safeguards are proposed in relation to Stratfield Brake District Wildlife Site.
- Thames Valley Police objection dated 04 July 2022: “I must object to this application in its current form, as I do not believe the scheme can be improved without changes to the proposed layout of the site, including access roads.”

11.23 It is unknown how and when the above issues are to be addressed.

11.24 A full planning application for 4 additional dwellings was submitted on 14th June 2022 and is still pending determination (ref: 22/01756/F). It is unknown whether the application will be approved.

Firm progress being made towards the submission of an application?

11.25 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application. This is not surprising given that the outline application has not yet been determined.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.26 No evidence has been provided.

Firm progress with site assessment work?

11.27 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.28 No evidence has been provided.

Summary

11.29 The site does not have planning permission. An outline planning application for up to 370 dwellings has been pending determination for almost 1.5 years. Even if approved, a reserved matters application would



still need to be submitted to and approved by the Council and no clear evidence has been provided to demonstrate when this will be or what it will be for.

11.30 Therefore, the Council has not provided “clear evidence that housing completions will begin on site within five years”. The site fails to meet the definition of “deliverable” as set out on page 67 of the Framework and should be removed from the supply. This results in a reduction of **20 dwellings** from the Council’s supply.



12. Conclusions

12.1 I conclude that a single 5YHLS calculation of deliverable sites against the local housing need for Cherwell at 1st April 2022 of 742 dwellings per annum plus the adopted requirement for Oxford's unmet housing need and a 5% buffer. I have identified a deliverable supply at 1st April 2022 of 3,565 dwellings. This equates to 2.85 years as shown in the table below.

12.2 My supply figure also results in a shortfall in the 5YHLS against the other possible scenarios, including the Council's case⁹⁵.

Table 12.1 – 5YHLS in Cherwell at 1st April 2022

| | Local housing need 742 dwellings p.a. plus Oxford's unmet need |
|--------------------------------------|--|
| Annual requirement | 742 + 380 = 1,122 |
| Shortfall | 340 |
| Five year requirement | 5,950 |
| Five year requirement plus 5% buffer | 6,248 |
| Annual requirement plus 5% buffer | 1,250 |
| 5YHLS | 3,565 |
| Years supply | 2.85 |
| Under / oversupply | -2,683 |

12.3 The implication of this is addressed by David Bainbridge.

⁹⁵ Please see Table C of appendix EP1



13. Appendices

- EP1.** 5YHLS calculations
- EP2.** Braintree proformas
- EP3.** E-mails relied on by South Oxfordshire at Sonning Common
- EP4.** E-mails and proformas relied on by West Oxfordshire
- EP5.** South Kesteven proformas
- EP6.** Information in relation to South East Bicester
- EP7.** Information in relation to Bicester Gateway



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