

Comments on the Heyford Park appeal decision by Ben Pycroft re: Housing Land Supply

For Archstone Ambrosden Ltd, Bellway Homes Ltd and Rosemary May | 23-425

Residential development of up to 120 dwellings at Land east of Ploughley Road, Ambrosden (LPA refs: 22/02866/OUT and 23/00091/REF, PINS ref: APP/C3105/W/23/3327213)



**Project:** 23-425  
**Site Address:** Land east of Ploughley Road, Ambrosden  
**Client:** Archstone Ambrosden Ltd, Bellway Homes Ltd and Rosemary May  
**Date:** 07 March 2024  
**Author:** Ben Pycroft

# Contents

1.	Introduction _____	1
2.	Heyford Park decision – housing land supply calculation_____	4



# 1. Introduction

- 1.1 This statement is submitted on behalf of Archstone Ambrosden Ltd, Bellway Homes Ltd and Rosemary May (the Appellants) in support of their appeal against the decision of Cherwell District Council (the Council) to refuse to grant outline planning permission for:

“up to 120 dwellings, vehicular and pedestrian access off Ploughley Road, new pedestrian access to West Hawthorn Road, surface water drainage, foul water drainage, landscaping, public open space, biodiversity and associated infrastructure. Access off Ploughley Road is not reserved for future consideration”

at land east of Ploughley Road, Ambrosden (LPA refs: 22/02866/OUT and 23/00091/REF, PINS ref: APP/C3105/W/23/3327213).

- 1.2 It addresses the conclusions made by Inspector Hockenhull in a recent decision (dated 5<sup>th</sup> March 2024) in relation to an appeal made by Richborough Estates, Lone Star Land Ltd, K and S Holford, A and S Dean, NP Giles and A L C Broadberry against the decision of Cherwell District Council to refuse to grant outline planning permission for the erection of up to 230 dwellings, creation of new vehicular access to Camp Road and all associated works with all matters reserved apart from means of access to Camp Road at OS Parcel 1570 Adjoining and West Of Chilgrove Drive, and Adjoining and North Of Camp Road, Heyford Park, OX25 5LX (LPA ref: 21/04289/OUT, PINS ref: APP/C3105/W/23/3326761). The Inspector has invited comments on the Heyford Park appeal decision by 5PM on Thursday 7<sup>th</sup> March 2024.
- 1.3 In summary, in allowing the appeal, the Heyford Park Inspector concluded that **the Council has less than a four year supply of deliverable housing land and the shortfall is significant** (paragraph 83). This conclusion was made following the Inspector’s finding **that a single calculation for housing land supply which includes both Cherwell’s needs and Oxford’s unmet needs should be undertaken because this approach accords with the Framework** (paragraphs 67-75).
- 1.4 The Heyford Park decision letter should be considered within the context of the substantial evidence that was submitted and heard in relation to housing land supply at that appeal. For the avoidance of doubt, the argument advanced by the Heyford Park Appellants by me - the same as that I advance for the Ambrosden Appellants – was that a single housing calculation should be undertaken. The arguments made by the Council in the current case for claiming that separate housing land supply calculations should be made (i.e. in Jon Goodall’s proof of evidence dated October 2023, rebuttal proof of evidence dated November 2023, supplementary proof of evidence dated February 2024 and further supplementary rebuttal evidence dated March 2024) are the same as those made by the Council in the Heyford Park case. Having considered all the evidence on this issue, the Heyford Park Inspector agreed that a single calculation should be



undertaken. The Council's claims that separate calculations should be undertaken were considered by the Heyford Park Inspector and were rejected.

- 1.5 Jon Goodall's latest supplementary rebuttal states at paragraph 1.18 that the Council "does not accept as correct" the Heyford Park Inspector's conclusions made in relation to the figure the housing land supply should be measured against. In an attempt to go behind the clear conclusions of the Heyford Park Inspector, Jon Goodall's supplementary rebuttal then goes on to make substantive points about how Cherwell's housing land supply should be calculated. I address these points in this statement.

## Background

- 1.6 From the outset, the Heyford Park and Ambrosden Appellants and the Council have the same housing land supply witnesses and same Counsel acting for them in the respective cases.
- 1.7 The Heyford Park decision followed a public inquiry which was held on 5<sup>th</sup> to 7<sup>th</sup> and 11<sup>th</sup> to 15<sup>th</sup> December 2023. I prepared and presented the evidence in relation to housing land supply at the Inquiry on behalf of the Appellants in that case. Jon Goodall prepared and presented the evidence in relation to housing land supply on behalf of Cherwell Council. The housing land supply evidence for that appeal has been added to the core documents to confirm that the same arguments put forward by the Council for the current appeal were made to the Heyford Park Inspector.
- 1.8 Evidence for the Heyford Park appeal was exchanged on 7<sup>th</sup> November 2023 (i.e. 9 days after the original evidence was exchanged for the current appeal on 25<sup>th</sup> October 2023). At that time, the Council's latest position on housing land supply had a base date of 1<sup>st</sup> April 2022. However, on 4<sup>th</sup> December 2023 (i.e. one day before the Heyford Park inquiry opened), the Council updated its housing land supply position to a base date of 1<sup>st</sup> April 2023. Consequently, the Heyford Park Appellants were allowed to submit additional evidence on housing land supply in relation to the Council's latest position by 7<sup>th</sup> December 2023. Again, this has been added to the core documents.
- 1.9 The housing land supply evidence was heard by way of a round table session which took place on 11<sup>th</sup> December 2023 and considered:
- Whether there should be separate housing land supply calculations for Cherwell's needs and one for Oxford's unmet housing need; and
  - the disputed sites.
- 1.10 Approximately half of the time spent on the round table session was spent on each issue. Whilst the evidence was heard by way of a round table session, this was in the context of a public inquiry with Counsel



acting for both parties. Both parties agreed that a round table session would be the most effective way of dealing with the issue.

1.11 The inquiry closed on 15<sup>th</sup> December 2023. The closing submissions of both parties have been added to the core documents for the current appeal.

1.12 Following the close of the Inquiry, Inspector Hockenhill invited comments on the following matters:

- A decision by Inspector Ford dated 12<sup>th</sup> December 2023 in relation to Stoic Roofing and Construction and Abbeymill Homes' appeal against the Council's decision to refuse to grant outline planning permission for up to 35 dwellings at land to the rear of No 12 and South of Dismantled Railway Heath Close, Milcombe. The written submissions of both parties have been added to the core documents;
- The revised National Planning Policy Framework which was updated on 19<sup>th</sup> December 2023 (and again on 20<sup>th</sup> December 2023). The written submissions of both parties have been added to the core documents;
- The Council's updated Housing Land Supply Position Statement (January 2024); and
- The revised Chapter 68 of the Planning Practice Guidance (PPG) relating to housing supply and delivery, which was updated on 5<sup>th</sup> February 2024. The written response of both parties have been added to the core documents.

1.13 Paragraphs 4 to 6 of the appeal decision explain that the Inspector invited comments on the four matters described in paragraph 1.12 above. It is clear on the face of the appeal decision that the Heyford Park Inspector took these comments in to account. I refer to the submissions made in relation to these points in my comments on the Heyford Park decision in relation to housing land supply as follows.



## 2. Heyford Park decision – housing land supply calculation

2.1 At paragraph 1.15a of the supplementary rebuttal, Jon Goodall criticises that the Heyford Park decision makes no express reference to paragraph 77 of the Framework. However, paragraph 13 of the appeal decision explains that one of the main issues in the appeal was:

“Whether the Council can demonstrate a deliverable housing land supply as required by the Framework” (my emphasis)

2.2 Paragraph 66 of the decision explains that there were two areas of dispute at the appeal:

“Firstly, whether there should be separate calculations for Cherwell’s needs and one for Oxford’s unmet housing need. Secondly whether the Council can demonstrate a deliverable housing land supply as required by the Framework.”

2.3 Paragraph 77 of the Framework sets out the minimum requirement to demonstrate a five year (or a four year) housing land supply and therefore the Inspector clearly had regard to the contents of paragraph 77 of the Framework and its requirements when identifying the housing land supply as a main issue and specifically referring to the requirement in the Framework to demonstrate it.

2.4 At paragraph 1.15b of the supplementary rebuttal, Jon Goodall then criticises that the Heyford Park decision does not refer to any relevant strategic policies and their conclusion regarding the requirement against which supply is assessed and specifically for not referring to policies PR12a and PR1 of the Partial Review. However, paragraph 67 of the appeal decision describes the adopted housing requirement of 22,840 dwellings over the period 2011 to 2031 in policy BSC1 of the Cherwell Local Plan Part 1. Paragraph 68 of the appeal decision then explains that the Partial Review seeks to meet Oxford’s unmet needs and makes provision for 4,400 homes. This requirement is set out in both policies PR1 and PR12a of the Partial Review.

2.5 Paragraph 69 of the appeal decision then states:

“The Partial Review goes on to explain in paragraph 5.160 that it is appropriate and necessary that the monitoring of housing supply for Oxford’s needs is undertaken separately from that of Cherwell. The justification for this is that the Partial Review is a focused Plan to help meet Oxford’s unmet need. It is a specific strategy to achieve a defined vision that does not undermine the delivery of the separate strategy for meeting Cherwell’s needs.”

2.6 Paragraph 5.160 of the Partial Review is within the supporting text to policy PR12a. The Heyford Park Inspector had therefore clearly considered these policies and the reason why the Council claimed and



claims that separate calculations should be made and specifically that the LPA's case is that "it is appropriate and necessary that the monitoring of housing supply for Oxford's needs is undertaken separately from that of Cherwell".

2.7 In Paragraph 1.15c of the Supplementary Rebuttal, Jon Goodall then states that the Heyford Park decision letter does not provide: "Confirmation of the specific numerical requirement against which supply is to be assessed for the purposes of NPPF(Dec)2023 paragraph 77 and what this comprises". However, two scenarios were provided at the appeal:

- The Council's case that there should be separate housing land supply calculations for Cherwell and Oxford's unmet housing need; and
- The Appellants' case that there should be a single housing land supply calculation comprising of the local housing need for Cherwell plus Oxford's unmet housing need.

2.8 Jon Goodall is incorrect to allege that the appeal decision does not provide confirmation of the specific numerical requirement and his interpretation results from an incorrect reading of the appeal decision. Paragraph 77 of the appeal decision is clear that the Heyford Park Inspector confirmed the correct numerical requirement was that advanced by the Appellants. This is because the Inspector confirms that the deliverable supply was either 2.26 years (using the Appellants' supply figure) or 3.32 years (using the Council's supply figure). Both these figures apply the single numerical requirement presented by the Appellants as part of its case.

2.9 The figures were set out in table 1.1 of the Appellants' out in the submissions on the revised Framework and PPG but for ease of reference are shown in the table below.





	Council Local housing need 710 dwellings p.a. plus Oxford's unmet need	Appellants Local housing need 710 dwellings p.a. plus Oxford's unmet need
Annual requirement	710 + 420 = 1,130	710 + 420 = 1,130
Shortfall	680	680
Five year requirement	6,330	6,330
Annual requirement	1,266	1,266
Deliverable supply at 1 <sup>st</sup> April 2023	4,201	2,855
Years supply	<b>3.32</b>	<b>2.26</b>
Undersupply	<b>-2,129</b>	<b>-3,475</b>

2.10 It is therefore clear from the appeal decision that the Heyford Park Inspector accepted the Appellants' evidence on this point and agreed the correct numerical requirement is a single requirement of 1,266 dwellings per annum.

2.11 Paragraph 2.3a of Jon Goodall's supplementary rebuttal states that the Heyford Park appeal decision provides no reasons to indicate that the Council's position was incorrect with respect of the requirement against which supply was to be assessed before the publication of the new Framework in December 2023. Again, this results from an incomplete reading of the Inspector's decision understood in its proper context (namely, in the context of the evidence that was presented to her). I address this point as follows.

2.12 As set out above, in paragraph 68 and 69 of her decision, the Inspector indicates that the Partial Review envisaged that monitoring housing land supply for Oxford should be undertaken separately from Cherwell. However, at paragraph 70 of the appeal decision, the Inspector then states:

“Accordingly, the Council argues that the five year housing land supply for Cherwell should exclude that of Oxford. However, **the Partial Review was adopted under the 2012 Framework. This has been superseded.**” (my emphasis).

2.13 Paragraphs 71 and 72 of the appeal decision state:



“71. The revised Framework published in December 2023 states in paragraph 67 that 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 authorities) can be met over the Plan period. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas. (Inspector Hockenhull’s emphasis)

72. The updated PPG also refers to a singular housing requirement. For example, in paragraph 68-002 it refers to a ‘**housing requirement** set out in strategic policies’. In paragraph 68-055 it states that ‘Both the 5-year housing land supply and the four year housing land supply that authorities should demonstrate for decision making should consist of deliverable housing sites demonstrated against the authority’s five year **housing land supply requirement**. (again Inspector Hockenhull’s emphasis).”

2.14 Paragraph 73 of the appeal decision states:

“These changes are significant and indicate that the expectation is for one single housing requirement which includes the unmet need from a neighbouring authority.”

2.15 Read in its full and proper context, it is therefore the clear that the Heyford Park Inspector is comparing the wording in the current iteration of the Framework with the 2012 Framework, which she had found had been superseded (paragraph 70). Whilst reference is made in paragraph 71 of the appeal decision to the revised Framework in December 2023, the part of paragraph 67 of the Framework which the Inspector highlighted i.e. “that strategic policy making authorities should establish a **housing requirement figure for their whole area**” was already included in the July 2018 version of the Framework (then within paragraph 65), which stated:

“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.”

2.16 Related to this, whilst paragraphs 2.14 and 2.15 of Jon Goodall’s supplementary rebuttal is critical that the Heyford Park decision does not include the full text of paragraph 67 of the Framework and claims that the full text of paragraph 67 supports the Council’s case that separate calculations should be made, this is misconceived. The remainder of paragraph 67 relates to the need for a housing requirement for neighbourhood plan areas to be set out which is included “within the overall housing requirement”.



2.17 As above, paragraph 72 of the appeal decision states that the updated PPG also refers to a **singular housing requirement**. That was the same with the July 2019 version of the PPG which accompanied the July 2018 Framework. Indeed, paragraph 68-002 of the PPG which is referred to in the appeal decision was updated in February 2024, but the part referred to by the Heyford Park Inspector remains unchanged from the July 2019 version, which stated:

“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.” (my emphasis)

2.18 Therefore, where at paragraph 73 of the decision the Heyford Park Inspector refers to the significant changes to the Framework, “which indicate that the expectation is for one single housing requirement”, the “significant changes” is in reference to the changes between the 2012 version of the Framework and subsequent versions, not the changes between the September 2023 version and December 2023 version of the Framework (and guidance).

2.19 Also in relation to the PPG, I note that paragraph 2.6 of the PPG Jon Goodall’s supplementary rebuttal now states that “of principal importance” is paragraph 68-006 of the PPG. For the avoidance of doubt, the Council also claimed that this was relevant to the Heyford Park Inspector in its response to the Inspector on the updated PPG (even though it has not been updated since July 2019). This was in front of the Heyford Park Inspector who was clearly aware of the point the Council makes.

2.20 Paragraph 68-006 of the PPG is irrelevant in this case. It addresses the situation where there are two conflicting strategic policies. If there is a conflict, the PPG states that the most recently adopted policies should be used for the purpose of calculating 5 year housing land supply in accordance with section 38(5) of the Planning and Compulsory Purchase Act 2004. This is not the case in Cherwell and this paragraph is irrelevant to the issues that arise here.

2.21 Within the context of paragraph 68-006 of the PPG, paragraph 2.9 of Jon Goodall’s Supplementary Rebuttal then states that my evidence does not grapple with paragraph 76 of the Framework. However, paragraph 76 of the Framework refers to a local planning authority’s “adopted plan” (singular). This is to be considered within the context of section 38(3)b of the Planning and Compulsory Purchase Act 2004, which explains that the development plan “is the development plan documents (taken as a whole) which have been adopted or approved in relation to the area”. Paragraph 76 of the Framework provides no support for the Council’s claim that there should be two separate calculations for housing land supply within Cherwell.



2.22 Paragraph 74 of the appeal decision deals with the Deddington and Milcombe appeal decisions. Specifically, the Inspector noted,

“The Inspector in the Milcombe decision referred to the fact that at that time, there had been no change in circumstances since the adoption of the Partial Review to justify a different approach. With the recent publication of the revised Framework, this is no longer the case. It is notable that the emerging Local Plan proposes to dispense with the separate calculation and have one single housing requirement.”

2.23 However, these comments need to be understood in the context of the issue that the Inspector was considering, and the evidence from the parties in relation to this. The highlighted parts of the Framework and PPG above by the Heyford Park Inspector were already in the 2018 Framework and 2019 PPG. However, the new text in paragraph 67 of the Framework which states “The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas” simply confirms that a single housing requirement is envisaged and it is this that was not in front of the Milcombe Inspector.

2.24 Indeed, the Appellants were allowed to respond in writing to the Milcombe decision and did so on 22<sup>nd</sup> December 2023. The response stated:

“Whilst the Appellants will respond separately on the revised Framework by 10th January 2024, paragraph 67 of the revised Framework includes new wording that states “the requirement [singular] may be higher than the identified housing need, if for example, it includes provision for neighbouring areas”. This confirms the Appellants’ case on the requirement and is a material change since the adoption of the Partial Review. This wording in the revised Framework was not before the Milcombe Inspector” (emphasis added)

2.25 As set out clearly in its evidence, the Appellants’ case was that there had been a material change as between the 2012 Framework (which the partial review had been examined under) and the 2018 Framework. The revised wording in the 2023 NPPF then confirmed that this was the case and was a new material consideration for the Inspector that had not been available to the Milcombe Inspector.

2.26 Paragraph 74 of the decision reflects the fact that the Inspector was accepting the Appellants’ case in this respect. This paragraph also has to be read in the context of the previous paragraphs of the Inspector’s decision. As set out above, these make it clear that the Inspector agreed that the 2012 NPPF, which the Partial Review was examined under, had been “superseded”, and that the Framework now indicates that a single requirement should be used for the purpose of calculating five year land supply.

2.27 As a result of finding that the supply on the Council’s figure was 3.32 years (and therefore less than four years), the Heyford Park Inspector did not form a conclusion on whether the Council was only required to



demonstrate a four year housing land supply or assess each of the disputed sites (paragraphs 76-83). For the avoidance of doubt, the Appellants' position remains unchanged

2.28 Finally, I note that paragraph 2.44 of Jon Goodall's supplementary rebuttal states:

“if the point of the non-delivery of the Partial Review sites is an issue, then this would be dealt with through the Local Plan Review and Reg 19 stage for more certainty. The NPPF tells us it is not a matter for any s78 Appeal to address this assessment.”

2.29 Firstly, the non-delivery of the Partial Review sites is an issue. Despite the claims made in the Partial Review, no dwellings have been delivered on the Partial Review sites to date, based on the Council's own evidence they are not expected to deliver any of the 1,700 dwellings required by 2026 and only 80 dwellings should be considered deliverable by 31<sup>st</sup> March 2028. Even on the Council's figures there would be a very significant shortfall of 2,995 dwellings against the 4,400 figure by the end of the plan period.

2.30 Secondly, as explained in my evidence for the current appeal, the Framework sets out the consequences for failing to demonstrate a deliverable five year (or 4 year) housing land supply. Consistent with the Framework, the Heyford Park Inspector applied the consequences of the Council's failure to demonstrate a deliverable housing land supply by concluding that the tilted balance to the presumption in favour of sustainable development was engaged. The Council's approach seeks to avoid the consequences of a failure to deliver any dwellings on the Partial Review sites and a failure to demonstrate a deliverable housing land supply. This is entirely inconsistent with the Framework.

2.31 Finally, I note that Jon Goodall's supplementary rebuttal refers to appeal decisions in Northamptonshire. However, those decisions relate to a different development plan in a different area and it is unclear how they are related to the position in Cherwell or the appeal decision at Heyford Park. The Appellants reserve the right to comment on these decisions further at the public inquiry.



# emery

PLANNING

2-4 South Park Court, Hobson Street  
Macclesfield, Cheshire, SK11 8BS

+44 (0)1625 433 881

Regus House, Herons Way  
Chester Business Park, CH4 9QR

+44 (0)1244 732 447



[emeryplanning.com](http://emeryplanning.com)