

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEAL**

BY

WATES DEVELOPMENTS LTD

LAND SOUTH OF GREEN LANE, CHESTERTON

OUTLINE PLANNING APPLICATION FOR UP TO 147 HOMES, PUBLIC OPEN SPACE, FLEXIBLE RECREATIONAL PLAYING FIELD AREA AND SPORTS PITCHES WITH ASSOCIATED CAR PARKING, ALONGSIDE LANDSCAPING, ECOLOGICAL ENHANCEMENTS, SUDS, GREEN / BLUE AND HARD INFRASTRUCTURE, WITH VEHICULAR AND PEDESTRIAN/CYCLE ACCESSES, AND ALL ASSOCIATED WORKS (ALL MATTERS RESERVED EXCEPT FOR MEANS OF ACCESS)”

**PINS REF.: APP/C3105/W/23/3331122
LPA REF.: 23/00173/OUT AND 23/00103/REF**

REBUTTAL PROOF (HOUSING LAND SUPPLY MATTERS)

**By
CHRISTOPHER ROBERTS**

JANUARY 2024

APPELLANT HOUSING LAND SUPPLY REBUTTAL

Rebuttal Evidence - Scope

- 1.1 I am instructed by Wates Developments (the Appellant) to provide a Rebuttal Proof of Evidence ('the Rebuttal'), in relation to housing requirement and housing supply matters. I have only addressed those specific matters which I considered required a written rebuttal. Other points are either already addressed in my proof of evidence and/or can be addressed in evidence at the Inquiry.
- 1.2 I address first a number of specific points raised in the evidence of Mr Thompson. This specifically concerns paragraphs 5.12 to 5.15 of his Proof of Evidence (on planning matters), where he raises issues concerning housing delivery and supply in the Cherwell District.
- 1.3 The Rebuttal then proceeds to focus on Mr Goodall's proof of evidence concerning the Five Year Supply of Housing. In particular, I consider:
 - The Local Housing Need Calculation (paragraphs 4.18-4.20 and 4.26-4.30 of Mr Goodall's proof)
 - NPPF, paragraph 226 – The Policies Map (paragraphs 5.10 – 5.18 of Mr Goodall's proof)
 - The housing requirement for calculating 5 year supply – separate/unified calculations (section 6 of Mr Goodall's proof)
 - Contested Sites and the Appellant's Identified Housing Supply.
- 1.4 Where relevant, reference should be made to the Housing Land Supply Statement of Common Ground (HLS SoCG), in addition to cited Core Documents.

Mr Thompon's Evidence on Housing Delivery and Supply

- 1.5 I do not remark on wider planning matters in Mr Thompson's Proof (and defer to the evidence of Mr Ross in that regard). However, paragraphs 5.12 to 5.15 of Mr Thompson's Proof of Evidence suggest that the Cherwell District is successfully meeting housing needs. This includes a remark made in paragraph 5.13, which suggests that "*the Local Plan, as a whole, is continuing to deliver a high level of growth consistent with the overall plan trajectory*".
- 1.6 As detailed in Section 3 of my Proof of Evidence, this is plainly incorrect.
- 1.7 In terms of **current performance**, on the basis of figures drawn from the AMR (to which I have made no adjustments), it is apparent that both parts of the adopted Local Plan have already under-delivered against adopted housing requirements. To date no dwellings have been delivered at the Partial Review sites, whilst a shortfall of -1,392 dwellings has arisen (to date) in relation to the adopted Local Plan requirement.

- 1.8 **Looking forward**, the same data (derived from the AMR without adjustments) shows that Cherwell District is forecasting: (a) a shortfall of some 3,416 homes against its Local Plan requirement by then end of the plan period and (b) a shortfall of some 2,995 homes against its Partial Review Requirement by the end of the plan period. On the Council's own figures, therefore, there will be an overall shortfall of some 6,411 homes against that which is required in the District by 2031.
- 1.9 This is what the Council believes will happen, and, indeed (as I note in paragraph 3.8 of my Proof of Evidence), this represents a marked deterioration when compared to the previous Housing Land Supply Statement (HLSS) 2023. It is hard to reconcile these figures with the picture of housing delivery painted by Mr Thompson.

Mr Goodall's Evidence on Housing Requirement and Five-Year Housing Supply

Local Housing Need Calculation

- 1.10 In paragraphs 4.18 to 4.20 and in paragraphs 4.26 to 4.30, Mr Goodall's evidence outlines that the Council now identify a Local Housing Need (LHN) figure for Cherwell of 703 dwellings per annum (dpa). This compares to the figure of 710 dpa outlined in the latest Annual Monitoring Report, as published in December 2023 (CD 3.14).
- 1.11 Mr Goodall outlines that this is because of the application of a 10-year household growth projection for the period 2024 to 2034. It is the Appellant's position that this is incorrect and that the appropriate 10-year projection covers the period 2023 to 2033. This aligns with the base date of the housing land supply period for the purposes of the determination of this appeal.
- 1.12 Before outlining the basis for my position, it is important to note the Council's revised calculation only decreases the LHN by 35 dwellings over the five-year housing land supply period (or 28 dwellings over a four-year period, as is argued in the Council's case). The impact of this on the Appellant's overall case is therefore limited.
- 1.13 As a separate point, I infer from Mr Goodall's evidence and from my discussions with him that when the latest Affordability Ratios are published in March 2024, the Council will seek to further update its Standard Method calculation to reflect these. This may be pertinent to this appeal if it is not (by that point) decided. Therefore, I reserve the right to submit further evidence on this matter if required.

The Council's Case

- 1.14 My understanding of the Council's case is that it largely rests on an interpretation of the Planning Practice Guidance (PPG) (at Paragraph 004 Reference ID: 2a-004-20201216). This refers to the operation of the Standard Method calculation of LHN.
- 1.15 I acknowledge what the PPG says in relation to Step 2 of the LHN calculation (which relates

to the affordability adjustment) namely;

“The most recent median workplace-based affordability ratios, published by the Office for National Statistics at a local authority level, should be used”.

- 1.16 However, it is my view that the Council’s interpretation of this (as applied to recalculate the LHN figure presented in Mr Goodall’s Proof of Evidence) leads to a conflict with the operation of NPPF paragraph 77 (as formerly reflected in paragraph 74 in earlier iterations of the NPPF). This requires that, where applicable, Councils are required to;

“...identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years’ worth of housing, or a minimum of four years’ worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either 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”.

- 1.17 Put more simply, the NPPF requires an annual update of the supply position against the housing requirement in the according base date year. This occurs at a fixed point of time. The necessity for consistency has been considered in several appeal decisions. In this respect, the **‘Woolpit’** appeal decision¹ (CD 4.35), in paragraph 67 states;

*“...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 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.” [my emphasis]*

- 1.18 The wording of the PPG (as set out in Paragraph 004) and the operation of NPPF paragraph 77 (formerly 74) is a matter that has been considered directly in several appeals. This includes an appeal (progressed via the Inquiry route) at **Thornbury, South Gloucestershire**² (CD 4.38) (14 May 2019). In paragraph 9 of that decision, the Inspector concluded;

*“The Ipa’s reason for producing Scenario 4 is found in Planning Policy Guidance (PPG). This says that when calculating average annual growth over a 10-year period, the current year should be used as the starting point. Whilst the Ipa’s Scenario 4 is technically correct **it does not allow for a like-for-like assessment of the position thoroughly tested at the inquiry (Scenario 1).** For reasons of consistency, I have discounted Scenario 4”*

- 1.19 In a recent appeal decision at **Kempsey, Worcestershire**³, located within Malvern Hills District (14 August 2023) (CD 4.39), the Inspector considered a very similar matter to that

¹ Land on East Side of Green Road, Woolpit, Suffolk (PINS Ref. APP/W3520/W/18/3194926).

² Land south of Gloucester Road, Thornbury, Gloucestershire (PINS Ref: APP/P0119/W/17/3189592)

³ Land At (OS 8579 4905), south of Post Office Lane, Kempsey, Worcestershire (PINS Ref: APP/J1860/W/22/3313440)

arising in Cherwell. Specifically, the Council had used a base date of 01 April 2022 for its 5YHLS calculation. However, the Council then prepared a new report to update its LHN calculation based on household growth using the start year of 2023.

- 1.20 At paragraphs 36 to 42 of their decision, the Inspector goes into the matter in some detail, concluding in paragraph 40 that;

“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.”

I am advised that the first words of the above passage are consistent with case-law relating to the limitations of PPG (to the effect that PPG cannot override the NPPF or introduce mandatory rules that are not contained in the NPPF), albeit there is a test case pending judgment before Mr Justice Holgate in the case of *Mead and Redrow v. Secretary of State for Levelling Up, Communities and Local Government* which was heard in the High Court last week in which it is likely that the Court will provide a comprehensive one on that issue. Leading counsel for Wates in the present appeal, Mr Banner KC, led for Mead in that case and will update the inquiry on the outcome once it is known. It will now suffice to say that if the existing case-law is upheld, that is likely to result in problems for the Council’s analysis in the present appeal.

- 1.21 At paragraph 41 the Inspector added the following;

“Whilst the HLSRa⁴ 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.” [my emphasis]

- 1.22 The Inspector for the Kempsey appeal refers to a further appeal decision (again in the Malvern Hills District) at **Hallow, Worcester**⁵ (25 May 2023) (CD4.40). This appeal

⁴ Note the ‘HLSRa’ refers to the updated document that Malvern Hills District Council introduced to amend the LHN.

⁵ Land at North Lodge, Main Road, Hallow, Worcester WR2 6HP (PINS Ref. Ref: APP/J1860/W/22/3304685)

progressed via the Written Representations procedure, and the Inspector concluded in paragraphs 26 to 29 of their decision that;

*“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.” [my emphasis]

- 1.23 Two further (conjoined) appeal decisions (31 August 2023)⁶ in Malvern Hills (both at **Collett’s Green**, near Worcester) (CD 4.41) also followed the same conclusions expressed by the Inspectors for Kempsey and Hallow. At paragraph 51, the Inspector states;

“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.”

- 1.24 Notwithstanding the concerns raised in the above appeals, at paragraphs 4.28 to 4.30 of his evidence (and based on our direct correspondence regarding the HLS SoCG) Mr Goodall nonetheless maintains that the use of the most recent affordability ratios (including the 2023 ratios, as are expected to be published in March 2024) will not skew the LHN calculation. It is argued, by Mr Goodall, that this is because the metadata inputs into the affordability ratio⁷ mean that the most recently published ratio (which I take to mean the 2023 ratio, when

⁶ PINS Ref. APP/J1860/W/22/3300301 and PINS Ref. APP/J1860/W/23/3316416

⁷ Namely ‘earnings’ data to the year ending April, and house prices which runs to September (with the midpoint being April).

published in March 2024) coincides more closely with the start of the supply period (01 April 2023) than does the ratio from the preceding year.

- 1.25 However, Mr Goodall's points do not change the fact that the affordability ratio is influenced by housing completions up to the end of September each year (because housing completions are a factor that informs median house prices). As such, the 2023 affordability ratio, when published in March 2024, will be influenced by house building rates up to September 2023.
- 1.26 What this means, is that if the 2023 affordability ratios are applied (when published in 2024), there will be six months in the 5YHLS period (i.e., 01 April 2023 to 30 September 2023), which have simultaneously fed into both the affordability ratio (that reflects past delivery) and the forward-looking assessment of housing supply (i.e., from 01 April 2023). This raises the prospect of double counting, as the supply in this six-month period will have influenced the need figure against which that supply is assessed.
- 1.27 To this, I add that the HDT stipulates explicitly that LHN is calculated in a manner consistent with the appellant's case for this appeal, with Footnote 15 of the Rulebook (page 6) (CD XXXX) stating that this calculation "*must use the affordability ratio for the previous calendar year*". This approach avoids the problem of double counting and a skewed assessment.

The Council's Referenced Appeals on this Matter

- 1.28 In paragraph 4.27 of Mr Goodall's evidence, reference is made to an appeal at Poplar Hill, Stowmarket,⁸ within Mid Suffolk District (13 August 2019) (CD 4.23). In paragraphs 54 and 55 of that decision, the Inspector points to the wording of the PPG, simply stating that "*there is no basis in guidance*" for adjusting the calculation in the manner suggested by the Appellant⁹.
- 1.29 As indicated, I accept that the PPG is written as it is and that the Inspector for Poplar Hill found that to be determinative. However, it is also notable that several other appeal decisions have concluded that there is an important requirement for consistency on both the requirement and supply sides of the annual 5YHLS calculation, with this being the approach supported by the NPPF paragraph 77 (formerly 74).
- 1.30 Reference is also made (in Mr Goodall's Proof of Evidence) to an appeal at Sutton Road, Witchford, East Cambridgeshire¹⁰ (CD 4.29). The matter of concern in that appeal was mainly that the Standard Method calculation was base-dated to a point when the adopted Local Plan had been less than five years old. The appellant, therefore, argued that the adopted Local Plan housing requirement should apply.
- 1.31 However, at the point of the decision, the adopted Local Plan requirement had been found to need updating (through a Regulation 10a Review) and the Inspector concluded that the Standard Method therefore applied. Evidently, then, the Sutton Road Inspector was

⁸ Land at Poplar Hill, Stowmarket (PINS Ref. APP/W3520/W/18/3214324)

⁹ Namely, to align the starting year for the 10-year household projection with the starting year of the 5YHLS period.

¹⁰ Land at Sutton Road, Witchford, East Cambridgeshire PINS Ref. APP/V0510/W/20/3245551

concerned with whether or not the Standard Method should apply at all. This is a substantively different issue when compared to this appeal, where it is the inputs into the Standard Method calculation that are disputed, rather than whether or not the Standard Method should apply.

- 1.32 Overall, I share the view of the Inspector for the Kempsey appeal, which is that the PPG cannot be understood in isolation from the NPPF and that updating the LHN calculation without a corresponding and matching of the supply of deliverable sites “...is not the approach supported by the Framework”. (Paragraph 41 of the Decision Letter).

NPPF Paragraph 226 – Policies Map

- 1.33 In paragraphs 5.10 – 5.18, Mr Goodall sets out why the Council considers that the Regulation 18 Cherwell Local Plan Review 2040 includes a Policies Map for the purposes of NPPF paragraph 226. The matter is addressed in Section 5 of my main Proof of Evidence, and I do not repeat the points raised there.
- 1.34 However, I would also draw attention to the Opinion of Sarah Reid KC (CD 5.31), as was provided in relation to the Upper Heyford Appeal¹¹ and which is, therefore, in the public domain. This considers the matter in detail and further confirms that the consultation document does not contain a Policies Map and that, consequently, Cherwell District Council is required to demonstrate a five-year housing land supply.

Housing Requirement – Separate/Unified Calculations

- 1.35 Section 6 of Mr Goodall’s Proof of Evidence (commencing paragraph 6.82) considers the substantive matter of disagreement between the parties in respect of the calculation of 5-year supply, namely concerning the separation of the Partial Review requirement from the general housing requirement for Cherwell and the resulting separate HLS calculations for the purpose of NPPF paragraph 77.
- 1.36 My Proof of Evidence considers this matter in detail (at paragraphs 5.28 to 5.118), and I do not repeat the points I made there. However, to aid the Inspector, I set out my comments on the following appeal decisions cited in Mr Goodall’s evidence (at footnotes 5, 6 and 7), namely;
- Appeal Ref: APP/J1860/W/21/3289643 Land at Leigh Sinton Farms, Leigh Sinton Road (B4503), Leigh Sinton, Malvern (CD/4.24).
 - Part Parcel 0025, Hill End Road, Twyning, Gloucestershire, GL20 6JD, 389971, 237249 PINS Ref: 3284820 (CD/4.27).
 - Appeal Ref: APP/G1630/W/23/3314936 Land at Trumans Farm, Manor Lane, Gotherington, Cheltenham (CD/4.25).
- 1.37 All three of these decisions relate to areas subject to a Joint Local Plan, which was more than five years old. As such, they are not analogous with Cherwell District, where a share of

¹¹ PINS Ref. APP/C3105/W/23/3326761

Oxford's unmet needs has been incorporated into the development plan for Cherwell (through the Partial Review). On this basis alone they are to be distinguished from the current position, and do not support the Council's approach.

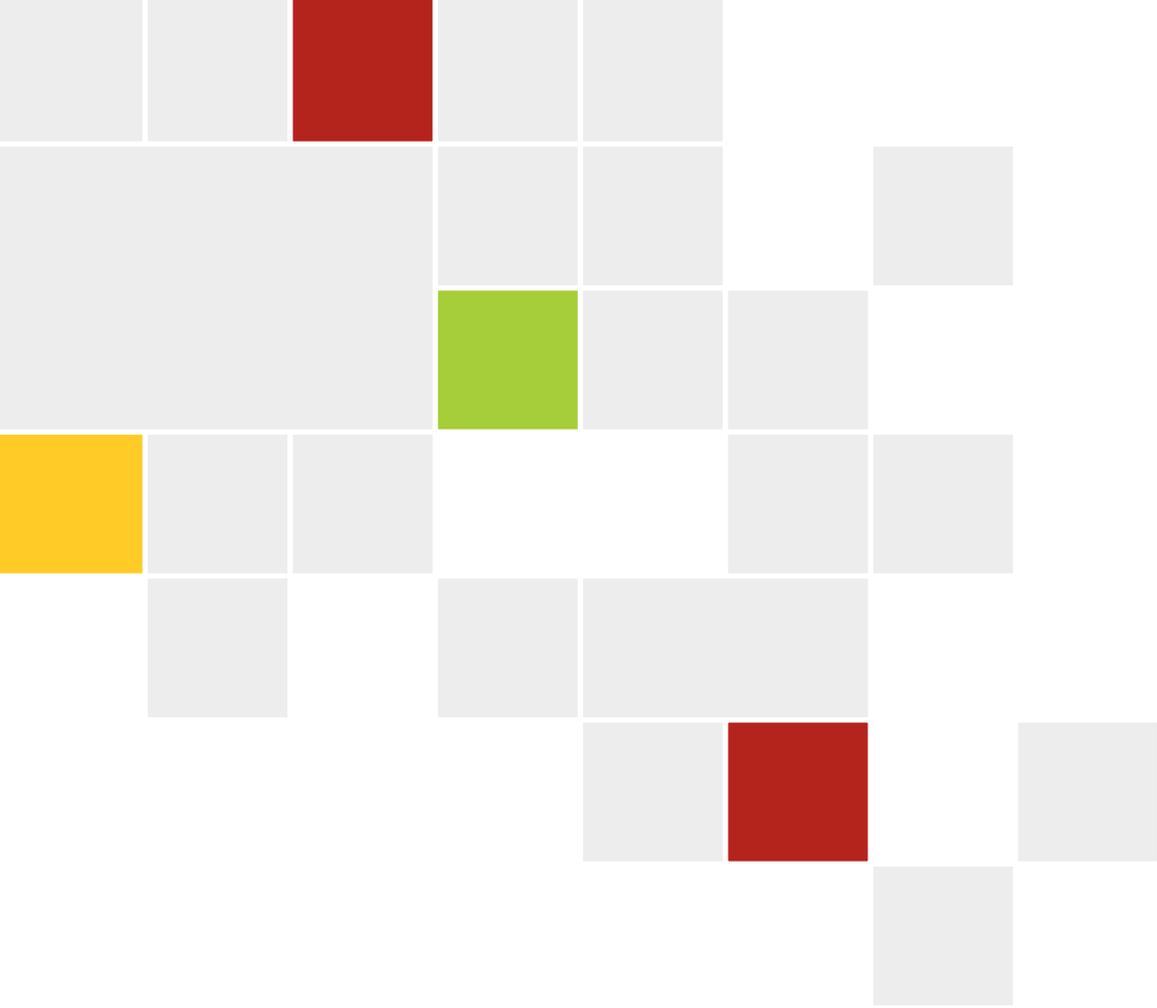
- 1.38 In the case of the **Leigh Sinton** decision, Malvern District Council was attempting to calculate 5YHLS using a combined LHN figure shared across its neighbouring authorities (Wychavon and Worcester), those being the constituent Authorities within the South Worcestershire Development Plan (SWDP), which had become more than five years old. This is not analogous with the situation in Cherwell, where the Partial Review housing requirement is not over five years old and in relation to which neither side argues that LHN should instead apply.
- 1.39 Mr Goodall's evidence (at paragraph 6.96) notes that the Leigh Sinton decision refers to the possibility of the HDT operating on a cross-local Authority boundary basis. This is raised in his Proof of Evidence to highlight that the Inspector concluded that the assessment of 5YHLS against LHN should not operate on that basis. This point is made to demonstrate the separateness of the two processes.
- 1.40 It must be recognised that the Leigh Sinton Inspector's conclusions had regard to a specific letter from the then Secretary of State, which proposed allowing combined HDT monitoring across the SWDP area. The HDT is, in fact, now undertaken on this basis for the SWDP Authorities.
- 1.41 However, arrangements concerning the HDT's operation in the SWDP and, indeed, the way LHN is reapportioned from the 'five policy areas' (identified in the SWDP) into the three statutory districts is a very particular arrangement that arises from the relatively unusual circumstances of their joint Development Plan. The Inspector's remarks, therefore, have to be understood as having arisen in a specific context that does not generalise well.
- 1.42 With respect to the **Twyning and Trumans Farm decisions** (both in Tewkesbury Borough), the main issue related to supply and, specifically, whether Tewkesbury Borough Council could include the sites within its administrative area (which were allocated in the Joint Core Strategy to meet Gloucester's need) against its own LHN requirement, now that the strategic policies in the Joint Core Strategy were more than five years old.
- 1.43 This is a fundamentally different situation to that in Cherwell, where the Partial Review sites have never been considered as a source of supply that could directly contribute to Oxford's housing requirements (i.e. Oxford City Council could not include them as a source of supply in its 5YHLS calculation). Rather, the contribution (or lack thereof) has always been to a constituent part of Cherwell's adopted housing requirement, as set out in Cherwell's Development Plan.

Contested Sites and the Appellant's Identified Housing Supply

- 1.44 Appendix 1 of my Proof of Evidence provides a detailed assessment of several sites identified in the Council's trajectory. I provided Mr Goodall with an indication of those sites in dispute (prior to the exchange of evidence) as part of engagement around the HLS SoCG.

As such, his evidence refers to these sites.

- 1.45 On a point of clarity, I no longer dispute the Council's position in respect of Graven Hill (as updated in the HLS SoCG), and I note from Mr Goodall's Proof of Evidence (in paragraphs 8.48 to 8.50) that the Council has made revisions to the trajectory identified in the AMR.
- 1.46 The 'Scott Schedule' presented in the detailed HLS SoCG represents the latest account of my position alongside the associated tables. I understand that the Scott Schedule also reflects the Council's position, as articulated in Section 8 of Mr Goodall's Proof of Evidence.
- 1.47 Whilst the HLS SoCG is likely to be concluded shortly (at the time of writing), I reserve the right to make further submissions in relation to the disputed sites, should information that is clearly pertinent arise.
- 1.48 Overall, and on the basis on my assessment, I identify a 5-year supply of some 3,573 dwellings. This is to be considered against a unified requirement of 6,330 homes.



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