

Statement of case re Housing Land Supply

For Gladman Developments Limited | 23-604

Land south of Tadmarton Road, Bloxham

Project: 23-604
Site Address: Land south of Tadmarton Road, Bloxham
Client: Gladman Developments Limited
Date: 02 February 2024
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Contents

1.	Introduction and summary	1
2.	Planning policy context	9
3.	Housing delivery in Cherwell	17
4.	5YHLS in Cherwell	25
5.	Matters agreed in relation to 5YHLS	28
6.	Matters not agreed re: 5YHLS – small sites and the windfall allowance	29
7.	Matters not agreed re: 5YHLS – separate calculations	33
8.	Matters not agreed re: 5YHLS – the “deliverable” supply	54
9.	Disputed sites	73
10.	Matters not agreed: 4YHLS	75
11.	Conclusions	80
12.	Appendices	83



1. Introduction and summary

- 1.1 Emery Planning is instructed to provide this statement of case in relation to Cherwell's housing land supply. It should be read alongside the general statement of case, which addresses all other planning matters.
- 1.2 This statement addresses the Council's housing land supply at 1st April 2023 as set out in the Annual Monitoring Report (published in December 2023)¹ and in the Housing Land Supply Position Statement Update (published January 2024)².
- 1.3 The Government's policy on housing land supply was recently updated in the National Planning Policy Framework (the Framework) on 20th December 2023. As set out in this statement, the implications of this for Cherwell are that it must continue to demonstrate a five year housing land supply (5YHLS) in accordance with paragraph 77 of the revised Framework. This statement demonstrates that the Council cannot demonstrate a 5YHLS.

Background

- 1.4 Emery Planning has extensive experience in dealing with housing land supply matters and has prepared and presented evidence relating to 5YHLS calculations at numerous Local Plan examinations, hearings and public inquiries.
- 1.5 Emery Planning has or is providing the evidence in relation to the Council's housing land supply at the following appeals:
 - Abbeymill Homes' appeal at land adjacent to Wise Crescent, Fringford (PINS ref: 3324251) – a hearing took place on 25th and 26th October 2023. The appeal was allowed on 1st December 2023 but the Inspector did not make a conclusion on 5YHLS;
 - 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. The appeal was allowed on 12th December 2023. In allowing the appeal, the Inspector concluded that the Council could not demonstrate a 5YHLS at 1st April 2022;
 - Richborough Estates, Lone Star Land Ltd, K and S Holford, A and S Dean, NP Giles and ALC Broadberry's appeal at OS Parcel 1570, adjoining and west of Chilgrove Drive, and adjoining and north of Camp Road, Heyford Park (PINS ref: 3326761) – the public inquiry took place in December 2023. The decision notice has not been issued at the time of writing;

¹ Appendix EP3

² Appendix EP4



- Deeley Homes' appeal at land north of Ells Lane, Bloxham (PINS ref: 3327581) – a hearing took place on 6th January 2024. The appeal was allowed on 24th January 2024 but the Inspector did not make a conclusion on 5YHLS; and
- 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 12th March 2024.

Summary

The Council's case on 5YHLS

- 1.6 The Council's 5YHLS position is set out in the AMR and the HLSPS Update. 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 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 and the shortfall against that requirement since 1st April 2021.
- 1.7 For Cherwell, solely against the Local Housing Need, the Council identifies a deliverable supply of 4,121, which against the local housing need equates to 5.8 years (a surplus of 571 dwellings in the 5YHLS).
- 1.8 The Council's position in relation to the deliverable supply of the Partial Review to meet Oxford's unmet housing need is that just 80 dwellings are deliverable, which equates to only 0.1 years. This is even less than the position at 1st April 2022 of 0.2 years.
- 1.9 The Council's position is set out in the following table:



Table 1.1 – Cherwell Council’s Claimed 5YHLS Positions at 1st April 2023

		Council’s 5YHLS position for Cherwell solely against the LHN	Council’s 5YHLS position on Oxford’s Unmet Housing Need
	Requirement		
A	Annual requirement	710	420 ³
B	Undersupply to be addressed in 5YHLS period	0	680
C	Total 5YHLS requirement (A X 5 + B)	3,550	2,780
D	Annual requirement plus (C / 5)	710	556
	Supply		
E	Council’s supply	4,121	80
F	Supply in years (E / D)	5.8	0.14
G	Over / under-supply (F – C)	571	-2,224

1.10 The Council considers that it only needs to demonstrate a 4 year housing land supply (4YHLS) in accordance with paragraphs 77 and 226 of the Framework. The HLSPS update states that the Council considers it can demonstrate a supply in excess of four years’ worth of housing measured against a five year housing requirement as shown in table 1.1 above. However, an alternative calculation is also provided against a four year requirement for Cherwell. Whilst a calculation for Oxford’s unmet needs is not provided, the following table sets this out.

³ i.e. 340 dwellings per annum 2023-26 and 540 dwellings per annum in 2026-28 = 2,100 / 5 = 420



Table 1.2 – Council’s 4YHLS at 1st April 2023 – separate calculations (no buffer and no shortfall)

	Council’s 4YHLS position for Cherwell solely against the LHN	Council’s 4YHLS position on Oxford’s Unmet Housing Need
Requirement		
Total 4YHLS requirement	2,840	1,560
Annual requirement	710	390
Supply		
Council’s 4 year supply	3,207	0
Supply in years	4.52	0
Over / under-supply	367	-1,560

The Appellant’s Case on 5YHLS

1.11 The Appellant considers that a single 5YHLS calculation should be applied. This statement explains that the Council’s approach of providing separate calculations is contrary to the December 2023 Framework. Against a single calculation, the Council cannot demonstrate a 5YHLS even on its own supply figure. However, we have reviewed the Council’s deliverable supply figures and conclude that 1,297 dwellings should be removed from the Council’s 4,121 figure because the Council has not provided “clear evidence” required for their inclusion and therefore these sites are not deliverable. We also conclude that the Council has not provided any “clear evidence” required for the inclusion of any of the Partial Review sites.

1.12 The respective positions are set out in the table below.



Table 1.3 – 5YHLS positions at 1st April 2023 against a single requirement of local housing need of 710 dwellings p.a. plus Oxford’s unmet need (no buffer)

	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 st April 2023	4,201	2,824
Years supply	3.32	2.23
Undersupply	-2,129	-3,506

1.13 The Appellant does not consider that the 4YHLS provision applies to Cherwell because the recent regulation 18 consultation did not include a policies map as it is required to under paragraph 226 of the Framework. However, if the Inspector disagrees and concludes that the 4YHLS provision applies then even on its supply figures, the Council cannot demonstrate a 4YHLS if a single calculation is made as shown in the following table:



Table 1.4 – 4YHLS positions at 1st April 2023 against a single requirement of local housing need of 710 dwellings p.a. plus Oxford’s unmet need (no buffer and not including the shortfall)

	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
Four year requirement	4,400	4,400
Annual requirement	1,100	1,100
4 year deliverable supply at 1 st April 2023	3,207	2,595
Years supply	2.91	2.36
Undersupply	-1,193	-1,805

1.14 If the Inspector disagrees and concludes that separate HLS calculations are consistent with the Framework, then the Appellant’s case is that a 5YHLS cannot be demonstrated as shown in the following table:



Table 1.5 - Appellant's 5YHLS at 1st April 2023 – separate calculations (no buffer)

		Appellants' position for Cherwell solely against the LHN	Appellants' position on Oxford's Unmet Housing Need
	Requirement		
A	Annual requirement	710	420 ⁴
B	Undersupply to be addressed in 5YHLS period	0	680
C	Total 5YHLS requirement (A X 5 + B)	3,550	2,780
D	Annual requirement plus (C / 5)	710	556
	Supply		
E	Appellants' supply	2,824	0
F	Supply in years (E / D)	3.98	0
G	Under supply (F – C)	-726	-2,780

1.15 If the Inspector concludes that the 4YHLS provision applies and separate calculations are to be provided, then the Appellant's view is that a 4YHLS cannot be demonstrated as shown in the table below.

⁴ i.e. 340 dwellings per annum 2023-26 and 540 dwellings per annum in 2026-28 = 2,100 / 5 = 420



Table 1.6 – Appellant’s 4YHLS at 1st April 2023 – separate calculations (no buffer and no shortfall)

	Appellant’s 4YHLS position for Cherwell solely against the LHN	Appellant’s 4YHLS position on Oxford’s Unmet Housing Need
Requirement		
Total 4YHLS requirement	2,840	1,560
Annual requirement	710	390
Supply		
Appellants’ 4 year supply	2,595	0
Supply in years	3.65	0
Under-supply	-245	-1,560

1.16 Finally, this statement explains that 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 AMR, there will be a shortfall of housing against the housing requirement set out in the Cherwell Local Plan of 3,416 dwellings by 2031. In addition to this, there will be a shortfall of 2,995 dwellings against the requirement set out in the Partial Review for Oxford’s unmet housing need by 2031. Therefore, according to the Council’s figures there will be a very significant shortfall against the adopted housing requirement of the plan as a whole of **6,411 dwellings**.

1.17 The policy implications of the above conclusions are addressed in the general statement of case.



2. Planning policy context

- 2.1 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 we explain later in this statement, 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

- 2.2 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), the Cherwell Local Plan 2011-31 (Part 1) Partial Review – Oxford’s Unmet Housing Need, adopted September 2020 and the remaining saved policies of the Cherwell Local Plan 1996.
- 2.3 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 is set out in the general planning statement of case.
- 2.4 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.”
- 2.5 This equates to an adopted, plan-led housing requirement of 1,142 dwellings per annum. Against this figure, the Council would only be able to demonstrate a 5YHLS of 3.6 years on its own supply figures⁵.
- 2.6 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 we explain in section 3 below, 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.

⁵ i.e. $4,121 / 1,142 = 3.61$



- 2.7 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.
- 2.8 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 previous version 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.
- 2.9 However, in February 2023, another review took place for the purposes of footnote 39 of the previous version of the Framework (now footnote 42). 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.
- 2.10 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 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"

- 2.11 This modification was required in order to make the plan sound.
- 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 we explain in section 3 below, 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 2023. 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);
- 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 4,201 dwellings (i.e. 4121 + 80) equates to just 3.25 years against the draft housing requirement in the consultation draft Local Plan⁶.

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 we discuss in section 7 below, this is because the December 2023 Framework (and indeed the September 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 similar wording as the current Framework. The same approach is also applied in the West Oxfordshire Local Plan, 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 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.

⁶ i.e. $4,201 / 1,293 = 3.25$



Other material considerations

Cherwell Annual Monitoring Report (AMR) 2023

- 2.25 The Council's 5YHLS position is set out in the AMR⁷, which was approved at the meeting of the Council's Executive on 4th December 2023. It claims that at 1st April 2023, Cherwell had a deliverable supply of 4,121 dwellings, which against the local housing need and a 5% buffer equates to a supply of 5.5 years. It also claims that at 1st April 2023 the 5YHLS for Oxford's unmet needs is just 0.1 years.
- 2.26 The draft AMR was published on 24th November 2023. The draft AMR included a site at Wretchwick Green for 50 dwellings, which the Council now accepts is not deliverable. We discuss the reasons for this in section 8 of this statement.
- 2.27 The Council provided the Appellant with the evidence it relies on for the inclusion of sites which fall in category b) of the definition of deliverable⁸ on 30th November 2023. We refer to this evidence in this statement.

Cherwell Housing Land Supply Position Statement Update (January 2024)⁹

- 2.28 This document explains that the Council's figure of 4,121 dwellings equates to 5.8 years without a buffer. It explains that the Council claims it only needs to demonstrate a 4YHLS in accordance with paragraphs 77 and 226 of the Framework. It states that a 4 year supply against a 4 year requirement is 4.5 years. Calculations for Oxford's unmet need have not been provided.

National planning policy and guidance

The National Planning Policy Framework ("the Framework")

- 2.29 The Framework was published in March 2012. It was revised in July 2018, February 2019, July 2021, September 2023, 19th December 2023 and most recently on 20th December 2023.
- 2.30 The relevant sections of the revised Framework in relation to this statement are:
- Footnote 8 which explains that the tilted balance to the presumption in favour of sustainable development applies where a) a local planning authority cannot demonstrate a 5YHLS (or 4YHLS if applicable as set out in paragraph 226 or b) where the Housing Delivery Test result is less than 75%;

⁷ Appendix EP3

⁸ Appendix EP1

⁹ Appendix EP4



- 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. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area;
 - Paragraph 72, in relation to an allowance for windfall sites;
 - Paragraph 75, which states that strategic policies should include a trajectory illustrating the expected rate of delivery over the plan period. It states that local planning authorities should monitor their deliverable land supply against their housing requirement, as set out in adopted strategic policies;
 - Paragraph 76, which states that local planning authorities are not required to demonstrate a 5YHLS where a) the adopted plan is less than five years old and the adopted plan identified a 5YHLS of specific, deliverable sites at the time the examination concluded. Transitional arrangements set out in footnotes 40 and 79 explain that this applies for applications made on or after 20th December 2023;
 - Paragraph 77, which explains that the requirement to demonstrate a 5YHLS (or in some circumstances a 4YHLS) is a *minimum* requirement and explains that the supply should be measured against either the housing requirement set out in adopted strategic policies, or the local housing need where the strategic policies are more than five years old. Footnote 42 explains that if the adopted housing requirement has been reviewed and found not to require updating, it should still be used. Footnote 42 also explains that where the local housing need is used it should be calculated using the standard method set out in the PPG. Paragraph 77 and footnote 43 also explain that a 20% buffer should apply where the latest HDT result is less than 75%. Finally, paragraph 77 of the Framework states that the PPG provides further information on calculating housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed;
 - Paragraph 78, which explains the circumstances in which a 5YHLS can be confirmed through an annual position statement; and
 - Paragraph 79, in relation to Housing Delivery Test Action Plans and the policy consequences for failing the HDT.
- Annex 1: Implementation, including:
 - Paragraph 226, which explains the circumstances when a local planning authority only has to demonstrate a 4YHLS i.e. where an authority has an emerging local plan that has either been submitted for examination or has reached regulation 18 or 19 stage and includes both a policies map and proposed allocations towards meeting housing need.
- Annex 2: Glossary, including:



- The definition of “deliverable” on page 69; and
- The definition of “windfall sites” on page 76.

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 this statement are:

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

2.32 At the time of writing, the PPG has not been updated to reflect the revised Framework, which was published on 20th December 2023.



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 2023, only 12,312 dwellings had been completed against a requirement over the same period of 13,704 dwellings. This has resulted in a significant shortfall of 1,392 dwellings at 1st April 2023. 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	410	-732	-2,320
2014/15	1,142	946	-196	-2,516
2015/16	1,142	1,425	283	-2,233
2016/17	1,142	1,102	-40	-2,273
2017/18	1,142	1,387	245	-2,028
2018/19	1,142	1,489	347	-1,681
2019/20	1,142	1,159	17	-1,664
2020/21	1,142	1,192	50	-1,614
2021/22	1,142	1,188	46	-1,568
2022/23	1,142	1,318	176	-1,392
Total	13,704	12,312	-1,392	



Year	Requirement (dwellings p.a.)	Completions (net)	Over / under provision	Cumulative
Average	1,142	1,026		

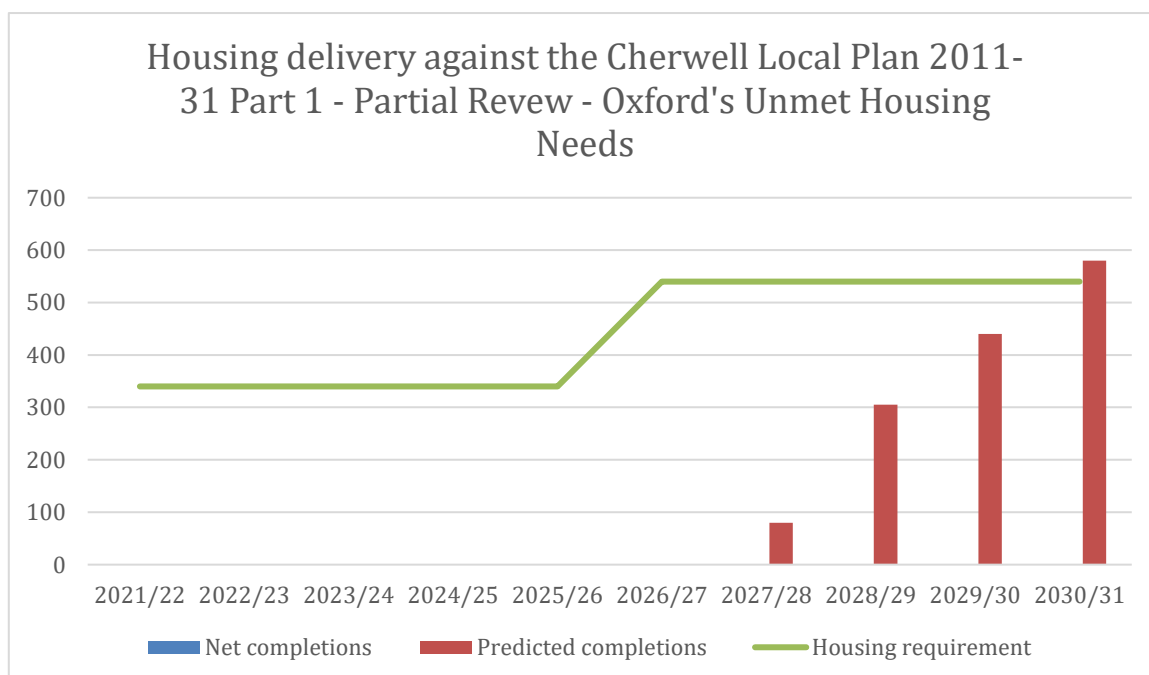
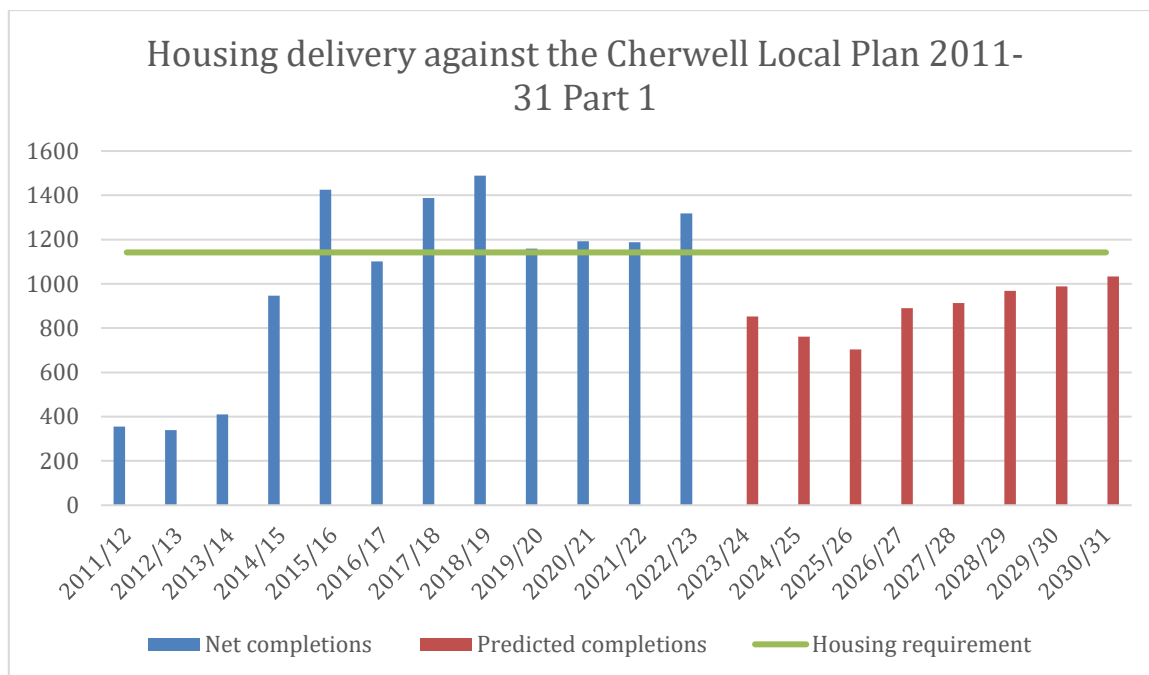
- 3.3 Over the remaining 8 years of the plan period, even by the Council's own figures set out in the AMR, it is only predicting 7,112¹⁰ dwellings will be delivered. This results in a significant shortfall in the plan period by 2031 of **3,416 dwellings**¹¹.
- 3.4 In addition to this, the Cherwell Local 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 2023, **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 2027/28 (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 1,405 dwellings will now be delivered. This results in a significant shortfall in the plan period of **2,995 dwellings**¹².
- 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 **6,411 dwellings**.
- 3.6 The significant under delivery of homes in Cherwell is shown in the following charts.

¹⁰ i.e. 4,121 dwellings in the 5YHLS period 1st April 2023 to 31st March 2028 and 2,991 dwellings in the period 1st April 2028 to 31st March 2031

¹¹ i.e. 22,840 – 12,312 – 7,112 = 3,416 dwellings

¹² i.e. 4,400 – 1,405 = 2,995





- 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	812	-2,481
Bicester 2	Graven Hill	2,100	2,100	954	-1,146
Bicester 12	South East Bicester	1,500	1,500	150	-1,350
Banbury 1	Canalside	700	700	282	-418
Banbury 4	Bankside Phase 2	825	600	350	-250
Villages 5	Former RAF Upper Heyford	2,361	2,361	2,093	-268
		10,779	10,554	4,641	-5,913



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	125	-565
PR6b	Land west of Oxford Road, North Oxford	670	670	280	-390
PR7a	Land south east of Kidlington, Kidlington	430	430	280	-150
PR7b	Land at Stratfield Farm, Kidlington	120	120	120	0
PR8	Land east of the A44, Begbroke	1,950	1,950	375	-1,575
PR9	Land west of Yarnton, Yarnton	540	540	225	-315
		4,400	4,400	1,405	-2,995



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 2023, there has already been a shortfall of 194 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	-219
2022/23	1,293	1,318	25	-194
Total	3,879	3,685	-194	
Average	1,293	1,228		

- 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 2023-28

Year	Requirement (dwellings p.a.)	Predicted Completions (net)	Over / under provision
2023/24	1,293	853	-440
2024/25	1,293	761	-532
2025/26	1,293	703	-590
2026/27	1,293	890	-403
2027/28	1,293	994 ¹³	-299

¹³ This includes 80 dwellings on the site in the Partial Review



Year	Requirement (dwellings p.a.)	Predicted Completions (net)	Over / under provision
Total	6,465	4,201	-2,264
Average	1,293	824	

Housing Delivery Test

3.10 The latest HDT results remain those for 2022, which were published on 19th December 2023. The result for Cherwell is summarised in the table below:

Table 3.6 – Published 2022 Housing Delivery Test Result

	Housing requirement				Housing delivery				HDT%
	2019- 20	2020- 21	2021- 22	Total	2019- 20	2020- 21	2021- 22	Total	
Cherwell	881	650	934	2,464	1,159	1,192	1,175	3,526	143%

3.11 As above, the HDT records delivery in Cherwell in 2021/22 was 1,175 dwellings. All those dwellings were in Cherwell and not on any of the sites allocated in the Partial Review to meet Oxford's unmet need. However, the requirement for that year in the HDT was 934 dwellings, which is the local housing need for Cherwell plus 220 dwellings for Oxford's unmet need. Whilst no dwellings were delivered on the Partial Review sites, delivery in Cherwell meant that the HDT was passed both in terms of addressing the local housing need for Cherwell and addressing the unmet need for Oxford on sites in Cherwell. As set out in below, a single housing land supply calculation would be consistent with the approach used in the HDT.

3.12 The Council's own housing trajectories set out in the AMR 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 930 dwellings per annum)¹⁴. Supply and delivery are related through the HDT and this is why it is important to maintain a supply and a 5YHLS is not a ceiling. Ultimately, an inadequate supply will result in inadequate delivery and the consequences of failing the HDT. This is shown in the following table.

¹⁴ i.e. around 710 dwellings per annum local housing need and 220 dwellings of Oxford's unmet housing need



Table 3.7 – Predicted completions in Cherwell against the HDT requirement 2023-28

Year	HDT Requirement (dwellings p.a.)	Predicted Completions (net)	Difference
2023/24	930	853	-77
2024/25	930	761	-169
2025/26	930	703	-227
2026/27	930	890	-40
2027/28	930	994 ¹⁵	64

¹⁵ This includes 80 dwellings on the sites in the Partial Review



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) – 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. The Milcombe appeal decision¹⁶ found that the Council could not demonstrate a 5YHLS at 1st April 2022.

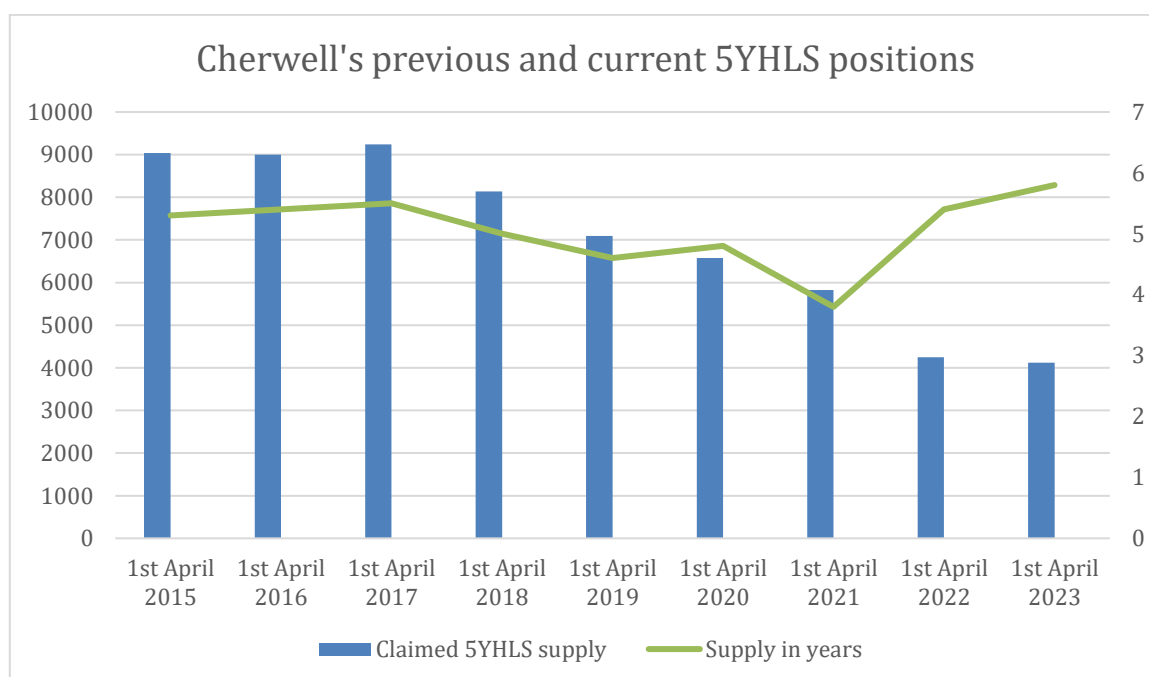
¹⁶ Appendix EP5A

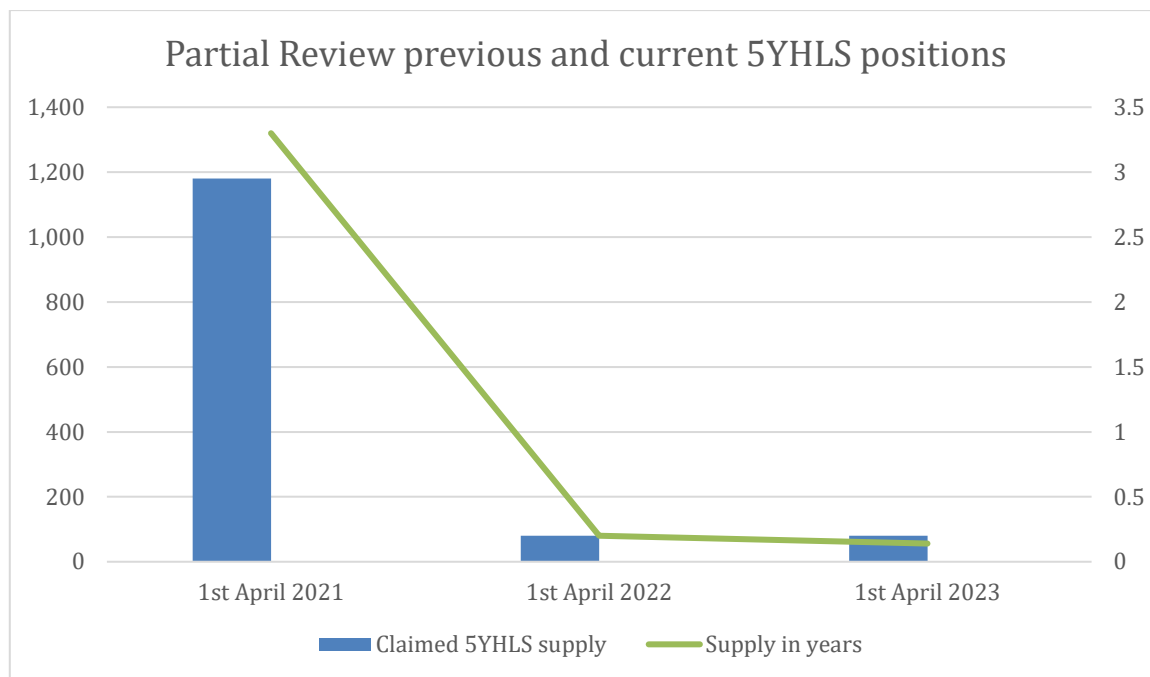


- As set out in section 1 and section 2 above, the Council's latest position is that it can demonstrate a 5YHLS of 5.8 years in Cherwell and 0.1 years for Oxford's unmet needs.

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

The base date and the five year period

- 5.1 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 for the purposes of this appeal is now 1st April 2023 and the relevant 5YHLS period is to 31st March 2028.

The figure the 5YHLS should be measured against

- 5.2 Paragraph 77 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 42 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.
- 5.3 Policy BSC 1 in the adopted development plan 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. This is 710 dwellings per annum. However, there is disagreement in relation to whether to that should be added to the adopted requirement for Oxford's unmet housing need.

The buffer

- 5.4 It is agreed that the 20% buffer does not apply.



6. Matters not agreed re: 5YHLS – small sites and the windfall allowance

6.1 Small windfall sites are those sites with a capacity of between 1 and 9 dwellings. As set out in the annex to the Framework on page 76, windfall sites are:

“Sites not specifically identified in the development plan”

6.2 The Council’s 5YHLS for Cherwell (excluding Oxford’s Unmet Housing Need) includes:

- 309 dwellings on small windfall sites with planning permission at 1st April 2023; and
- 250 dwellings on a small sites windfall allowance.

6.3 In total therefore, the Council considers that 559 dwellings are deliverable on small sites over the 5YHLS period. The Council’s trajectory for the two sources of small windfall sites are as follows:

Table 6.1 - Small windfall sites and the windfall allowance

Source	Year 1 2023/24	Year 2 2024/25	Year 3 2025/26	Year 4 2026/27	Year 5 2027/28	Total 5YHLS
Small windfall sites with pp	116	116	77	0	0	309
Small sites windfall allowance	0	0	0	125	125	250
Total	116	116	77	125	125	559

6.4 We comment as follows.

6.5 Firstly, only 309 dwellings on small windfall sites have planning permission at 1st April 2023. This is the lowest number of dwellings with planning permission on small windfall sites over the last 5 years as shown in the following table. The number of dwellings with planning permission on small windfall sites has reduced each year as shown in the table below.



Table 6.2 – Number of dwellings on small windfall sites with planning permission each year since 1st April 2018

Base date	Source	Banbury – small sites with pp	Bicester – small sites with pp	Other areas – small sites with pp	Total no. of small windfall sites with planning permission
1 st April 2018	2018 AMR	216	54	254	524
1 st April 2019	2019 AMR	177	34	270	481
1 st April 2020	2020 AMR	185	31	262	478
1 st April 2021	2021 AMR	106	36	217	359
1 st April 2022	2022 5YHLS position statement	99	34	185	318
1 st April 2023	2023 AMR	62	45	202	309

6.6 Secondly, the Council does not apply a lapse rate. However, we note from the Council’s completion data that 426 dwellings on 232 small windfall sites lapsed over the plan period 1st April 2011 to 31st March 2023 (i.e. around 35 dwellings per annum). Nevertheless, the definition of deliverable states that small sites with planning permission should be considered deliverable until permission expires. Consequently, we do not dispute the inclusion of 309 dwellings on small sites in the 5YHLS.

Small sites windfall allowance

6.7 The Council now claims that a small sites windfall allowance of 250 dwellings should be included in the 5YHLS (i.e. 125 dwellings per annum applied to years 4 and 5). This is an increase of 50 dwellings compared to the position set out in the position statement at 1st April 2022, which claimed the windfall allowance was 200 dwellings (i.e. 100 in years 4 and 5). We agree that the windfall allowance should be 100 dwellings per annum in years 4 and 5 but dispute the increase to 125 dwellings per annum now claimed by the Council.

6.8 It is unclear why the Council has increased the small sites windfall allowance compared to the previous position.

6.9 Paragraph 72 of the Framework states:



“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

6.10 Policy BSC 1 of the Cherwell Local Plan: “District Wide Housing Distribution” sets out that 1,274 dwellings will be delivered on small windfall sites between 2014 and 2031. This equates to an annual average of 75 dwellings on small windfall sites over the plan period.

6.11 The Council has not provided compelling evidence for the inclusion of a windfall allowance of 250 dwellings. The AMR simply states:

“Windfall completions on small sites have averaged 140 per year since 2011.”

6.12 However, we dispute this for the following reasons.

6.13 Firstly, as above the number of dwellings on known small windfall sites with planning permission at 1st April 2023 is only 309 dwellings. These dwellings are expected to be delivered over the first three years of the 5YHLS period (i.e. an average of 103 dwellings per annum). As shown in table 6.2 above, the number of dwellings with planning permission on small windfall sites has been declining each year. Within this context, there is no compelling evidence to justify an increase of delivery to 125 dwellings per annum in years 4 and 5 as claimed by the Council.

6.14 Secondly, it is of note that the Council claims the windfall allowance should be 125 dwellings per annum in 2026/27 and 2027/28 (i.e. the last 2 years of the 5YHLS period) but reduces this to 100 dwellings per annum from 2028/29 to 2030/31 (i.e. beyond the 5YHLS period) as shown on page 21 of its trajectory in the AMR.

6.15 Thirdly, the Council has not evidenced that windfall completions on small sites have averaged 140 per year since 2011. Table 17 of the AMR claims that between 1st April 2011 and 31st March 2023 there were 1,634 completions on windfall sites of less than 10 dwellings. This equates to an annual average of 136 dwellings per annum, not 140.

6.16 However, the 136 average figure represents the average completion on sites with a capacity of less than 10 dwellings. However, not all of these are windfall sites. Some of these are sites allocated in the Local Plan.

6.17 Table 15 of the 2022 AMR explained that between 1st April 2011 and 31st March 2023 there were 1,501 completions on windfall sites of less than 10 dwellings. Therefore, the Council claims that in 2022/23 there



were 133 completions on small windfall sites (i.e. 1,634 in table 17 of the 2023 AMR minus 1,501 in table 15 of the 2022 AMR). We have reviewed the completions data for 2022/23 and found there were 133 net completions on sites that had a capacity of less than 10 dwellings per annum. However, some of these sites are allocations and are therefore not by definition windfall sites. The 133 figure includes:

- 4 dwellings at phase 7B at Heyford Park (LPA ref: 17/01119/REM) – this is an allocated site (Villages 5) in the Local Plan and not a windfall site;
- 22 dwellings at Graven Hill. Again, this is an allocated site (Bicester 2); and
- 3 dwellings at KMF South West Bicester. This is an allocated site (Bicester 3).

6.18 Therefore, only 104 net dwellings were delivered on small windfall sites in 2022/23, not 133.

6.19 Similarly, table 15 of the 2021 AMR explains that 1,344 dwellings had been completed on small windfall sites and therefore, according to the Council there were 157 dwellings completed on small windfall sites in 2021/22 (i.e. 1,501 in table 15 of the 2022 AMR minus 1,344 in table 15 of the 2021 AMR). However, the completion data for 2021/22 shows that of these 157 dwellings, 69 were on plots at Graven Hill and were therefore not windfall. Therefore, only 88 net dwellings were delivered on small windfall sites in 2021/22, not 157.

6.20 For these reasons, we conclude that the windfall allowance should remain as 100 dwellings per annum in years 4 and 5 as was the case in the previous position statement and is the Council's case for the years beyond the 5YHLS period. This results in a reduction of **50 dwellings** in the Council's 5YHLS.



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

The Council's case

7.1 As set out in section 1 of this statement, 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 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 and the shortfall against that requirement since 1st April 2021.

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"*¹⁷.

7.3 The two calculations are shown in the following table:

¹⁷ Please see paragraphs 6.13 to 6.22 of the Council's Statement of Case



Table 7.1 – Council’s case re: 5YHLS

		Council’s 5YHLS position for Cherwell solely against the LHN	Council’s 5YHLS position on Oxford’s Unmet Housing Need
	Requirement		
A	Annual requirement	710	420 ¹⁸
B	Undersupply to be addressed in 5YHLS period	0	680
C	Total 5YHLS requirement (A X 5 + B)	3,550	2,780
D	Annual requirement plus (C / 5)	710	556
	Supply		
E	Council’s supply	4,121	80
F	Supply in years (E / D)	5.8	0.14
G	Over / under-supply (F – C)	571	-2,224

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.

¹⁸ i.e. 340 dwellings per annum 2023-26 and 540 dwellings per annum in 2026-28 = 2,100 / 5 = 420



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)¹⁹ 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]." (emphasis added)

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

¹⁹ Appendix EP6



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 AMR does not consider that any dwellings will be delivered on the Partial Review sites between 2021 and 2027. In addition, the Council itself only considers 80 dwellings are deliverable on sites allocated in the Partial Review by 31st March 2028.

7.18 To support its case at the Milcombe hearing, the Council referred to appeal decisions in Tewkesbury²⁰ and Malvern Hills²¹. 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.

²⁰ PINS ref: 3314936 – Gotherington – 11th September 2023 – Appendix **EP5B** PINS ref: 3284820 – Hill End Road, Twynning – 24th March 2023 – appendix **EP5C**

²¹ PINS ref: 3289643 – Leigh Sinton Farms – 5th July 2022 – core document **EP5D**



- 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 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 we discuss below.

The Appellant's case

- 7.21 We 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 67 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. Indeed, paragraph 67 states that the requirement may be higher than the local housing need if, for example, it includes provision for neighbouring areas.

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. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”

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. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area (see paragraph 67 below). There may be exceptional circumstances, including relating to the particular demographic characteristics of an area which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect 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** (emphasis added)

7.27 Paragraph 67 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. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment. 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 allocations³³. 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.” (emphasis added)

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 PPG²² 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

²² Paragraph: 010 Reference ID: 2a-010-20201216 – Revision date 16 12 2020



only those subject to the cities and urban centres uplift may strive to plan for more homes. 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 67 which explain the process of establishing a housing requirement.

7.31 Paragraph 77 of the 2023 Framework then sets out the minimum requirement for Local Planning Authorities to demonstrate a 5YHLS (or 4YHLS) 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:

“In all other circumstances, local planning authorities should 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. Where there has been significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period). National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.”

7.32 Footnote 42 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 77 and footnote 42 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 PPG²³ 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:

²³ Paragraph: 001 Reference ID: 68-001-20190722 – revision date 22 July 2019



“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)

7.35 Paragraph 68-002 of the PPG²⁴ 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 PPG²⁵ 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 PPG²⁶ 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)

²⁴ Paragraph: 002 Reference ID: 68-002-20190722 – revision date 22 July 2019

²⁵ Paragraph: 003 Reference ID: 68-003-20190722 – revision date 22 July 2019

²⁶ Paragraph: 008 Reference ID: 68-008-20190722 – Revision date 22 July 2019



- 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. This includes the local housing need for an area and unmet needs from a neighbouring area.
- 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 similar wording of the current Framework²⁷.
- 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

²⁷ The wording of paragraphs 61, 67 and 77 in the 2023 Framework are similar to that used in paragraphs 60, 65 and 73 of the 2018 Framework, which the South Oxfordshire Local Plan was examined under. Additional text at paragraph 61 to state that the LHN is an advisory starting point for establishing a housing requirement and additional text at paragraph 67 to state that the housing requirement for the whole area may be higher than the LHN if for example it includes provision for neighbouring areas.



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

- 7.46 As we have set out in section 2 above, 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 housing 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.

- 7.47 Paragraphs 3.159 and 3.160 of the Local Plan Review use the same wording as paragraph 61 of the 2018 Framework (similar to that of 61 of the 2023 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”

- 7.48 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.
- 7.49 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 710 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 420 dwellings²⁸ should be added to the 710 figure. Taking the two components together, the total housing requirement for the district for the purposes of the 5YHLS calculation is 1,130 dwellings per annum²⁹.
- 7.50 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.
- 7.51 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 to refuse to grant outline planning permission for up to 300 dwellings at land east of Grove, Grove³⁰.

²⁸ i.e. 340 dwellings per annum 2023-27 and 540 dwellings per annum in 2026/27 and 2027/28= 2,100 / 5 = 420

²⁹ i.e. 710 + 420 = 1,130

³⁰ PINS ref: 3310788, appendix EP5E



7.52 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 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



7.53 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.

7.54 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”

7.55 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.

7.56 Again, the wording of the HDT measurement rule book refers to a single housing requirement which includes unmet need from neighbouring authorities. In Cherwell, as we explained in section 3 of our statement, the HDT is measured against Cherwell’s local housing need plus Oxford’s unmet housing need.

7.57 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 we have explained above and in section 3 of our statement, “*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

7.58 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.

7.59 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: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years”.

7.60 Paragraph 79 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 the local planning authority’s housing requirement over the previous three years, the following policy consequences should apply:

- a) where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years;
- b) where delivery falls below 85% of the requirement over the previous three years, the authority should include a buffer of 20% to their identified supply of specific deliverable sites as set out in paragraph 77 of this framework, in addition to the requirement for an action plan.
- c) where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies, as set out in footnote 8 of this Framework, in addition to the requirements for an action plan and 20% buffer.

7.61 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 2028 equating to 0.1 years against the requirement and shortfall. 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 5.8 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 79 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.

7.62 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 3.32 year supply³¹. The tilted balance to the presumption in favour of sustainable development therefore applies.

The application of the tilted balance

7.63 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 5.8 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.

7.64 As we 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"

7.65 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.

7.66 Given that the Council can only demonstrate a 0.14 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)"*.

³¹ Please see Table 1.3 above



- 7.67 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.
- 7.68 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)³² and confirmed in the latest Housing and Economic Needs Assessment (HENA)³³. 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.
- 7.69 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.
- 7.70 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;

³² Appendix EP7

³³ Appendix EP8



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)**

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

Summary

- 7.72 In summary, the Council’s approach of having separate 5YHLS calculations is inconsistent with the December 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 or there 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.
- 7.73 The 5YHLS should be measured against the local housing need for Cherwell (of 710 dwellings per annum) and to this should be added Oxford’s unmet housing need (of 420 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.



7.74 A single 5YHLS calculation for Cherwell means that the Council can only demonstrate a 3.32 year supply even on its supply figure³⁴.

³⁴ Please see Table 1.3 above



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

What constitutes a deliverable site?

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

8.1 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.”

8.2 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.”

8.3 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.

- 8.4 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.”

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

- 8.6 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.” (emphasis added)

- 8.7 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.**” (emphasis added)

Current National Planning Policy and Guidance

- 8.8 The definition of “deliverable” is set out on page 69 of the Framework (December 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.”

8.9 The PPG was most recently updated on 22nd July 2019. Paragraph 68-007 of the PPG³⁵ 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:

“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.

³⁵ Paragraph 007 Reference ID: 68-007-20190722: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”



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

Assessment

- 8.10 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.
- 8.11 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

- 8.12 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 we discuss below.

The absence of any written evidence

- 8.13 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, Nantwich³⁶, 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, Surrey³⁷ 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);

³⁶ PINS refs: 2197532 and 2197529 – Appendix EP5F

³⁷ PINS ref: 3227970 – core document EP5G



- In an appeal decision regarding land at Station Road, Stalbridge, North Dorset³⁸ 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, Chichester³⁹, 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).

The most up to date evidence

8.14 Paragraph 68-004 of the PPG⁴⁰ 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)."*

8.15 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.

8.16 In an appeal regarding land on the east side of Green Road, Woolpit⁴¹, 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

³⁸ PINS ref: 3284485 – appendix EP5H

³⁹ PINS ref: 3270721 – appendix EP5I

⁴⁰ Paragraph: 004 Reference ID: 68-004-20190722: *"How can an authority demonstrate a 5 year supply of deliverable housing sites?"*

⁴¹ PINS ref: 3194926 – appendix EP5J



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.”

- 8.17 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)⁴², 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:

“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)”.

- 8.18 Similarly, in a decision regarding land off Darnhall School Lane, Winsford⁴³, 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 supply⁴⁴.

- 8.19 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 appeal⁴⁵, 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)

- 8.20 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

- 8.21 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

⁴² PINS ref: 3169314 – appendix **EP5K**

⁴³ PINS ref: 2212671 – appendix **EP5L**

⁴⁴ Paragraph 344 of the Inspector’s Report and paragraph 15 of the Decision Letter.

⁴⁵ PINS refs: 2197532 and 2197529 – appendix **EP5F**



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.

8.22 For example, in allowing an appeal for 120 dwellings at land east of Gleneagles Way, Hatfield Peverel⁴⁶, the Secretary of State found Braintree Council could not demonstrate a five year housing land supply.

8.23 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”

8.24 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 rates⁴⁷. 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.

8.25 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, Sturry⁴⁸, 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.

8.26 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

⁴⁶ PINS ref: 3180729 – appendix **EP5M**

⁴⁷ Appendix **EP9**

⁴⁸ PINS ref: 3216104 – core document **EPN**



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)

- 8.27 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 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.”

- 8.28 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, Rudgwick⁴⁹, 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.
- 8.29 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. We 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.

⁴⁹ PINS ref: 3227970 – appendix EP5G



8.30 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, Exeter⁵⁰, 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
- 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).

8.31 We 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

8.32 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 Common⁵¹. In that case, the Inspector concluded that the Council could only demonstrate a 4.21 year supply.

8.33 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.

8.34 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.”

⁵⁰ PINS ref: 3292721 – appendix EP50

⁵¹ PINS ref: 3265861 – appendix EP5P



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-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. (emphasis added)

8.35 This is relevant because in that case the Council had submitted emails from those promoting sites⁵². However, the Inspector in that case found that such emails were not clear evidence as set out in the paragraphs above.

8.36 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**” (emphasis added)

8.37 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

⁵² Appendix EP10



of delivering development sites and experience of the housebuilding industry including lead-in times”

8.38 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. 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 decision⁵³

8.39 In this case, West Oxfordshire accepted that it could not demonstrate a deliverable 5YHLS. However, the extent of the shortfall was not agreed. Our 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 our position of 2.5 years rather than the Council’s figure of 4.1 years (paragraph 59).

8.40 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 sites⁵⁴. However, the Inspector concluded that this was not “clear evidence” and removed the sites from the deliverable supply.

Annual Position Statements

8.41 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.

8.42 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

⁵³ PINS ref: 3301202 – appendix **EP5Q**

⁵⁴ Appendix **EP11**



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 sites⁵⁵, 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);
- 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).

8.43 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.

8.44 We now discuss the disputed sites in Cherwell as follows.

8.45 The AMR claims that the deliverable supply at 1st April 2023 is 4,121 dwellings (plus 80 dwellings on the Partial Review sites).

8.46 As set out in table 1.3 above, if a single 5YHLS calculation is made including Oxford’s unmet housing need, then the Council cannot demonstrate a 5YHLS. On the Council’s supply figure, the supply would be **3.32 years**. As set out in table 1.3 above, our supply figure against the single 5YHLS figure is **2.23 years**.

8.47 If separate calculations should be made then 571 dwellings would need to be removed from the Council’s supply for there to be a shortfall in the 5YHLS in Cherwell against the local housing need (and excluding Oxford’s Unmet Housing Need). Even on the Council’s case, there is a very significant shortfall against Oxford’s unmet housing need of 2,224 dwellings⁵⁶. As set out in table 1.5 above, our supply figure for Cherwell (excluding Oxford’s unmet housing need) equates to **3.98 years** (a shortfall 726 dwellings).

⁵⁵ Appendix EP12

⁵⁶ Please see table 1.1 above



Clear evidence of deliverability

8.48 On 30th November 2023, we received the evidence that Cherwell relies on for the inclusion of sites in category b) of the definition of deliverable and received the following:

- A word document called: “Sites Appellant Claims Lack Clear Evidence” (**Appendix EP1A internal page 50 to 61**). Please note, despite the name of the document, we had not identified the disputed sites before we received this document;
- Pre-application consultation boards from Greencore Homes in relation to land north west of Station Road, Launton (**Appendix EP1B internal page 62 to 69**);
- Sales particulars in relation to Hanwell Fields, Dukes Meadow Drive, Banbury (**Appendix EP1C internal page 70 to 73**);
- A draft S106 agreement with Hallam Land in relation to land to the north east of Oxford Road, Banbury (**Appendix EP1D internal page 74 to 161**);
- Minutes of a meeting between Hallam Land and Council officers on 8th August 2023 in relation to land to the north east of Oxford Road, Banbury (**Appendix EP1E internal page 162 to 164**);
- Bloor homes layout for their current site at Banbury Rise, Banbury (**Appendix EP1F internal page 165**); and
- 13 e-mails in relation to:
 - Hanwell Fields – this is an email from the planning agent to the Council dated 23rd October 2023 with a completed proforma attached (**Appendix EP1G internal page 166 to 171**);
 - Hanwell Fields – this is an email from Manor Oak Homes to the Council dated 15th November 2023 in relation to the S106 agreement (**Appendix EP1H internal page 172 to 173**);
 - Drayton Lodge – this is an email from Vistry Homes to the Council dated 30th March 2023 with a landscape masterplan attached (**Appendix EP1I internal page 174 to 176**);
 - Drayton Lodge – this is an email from Oxford County Council to the Council dated 11th July 2023 in relation to the routing of construction traffic (**Appendix EP1J internal page 177 to 182**);
 - Drayton Lodge – this is an email from the developer to the Council dated 10th November 2023 in relation to build rates (**Appendix EP1K internal page 183 to 184**);
 - Banbury Rise – this is an email from Bloor Homes to the Council dated 13th October 2023 in relation to delivery timescales (**Appendix EP1L internal page 185 to 187**);
 - Land north east of Oxford Road, Banbury – this is an email from the planning agent to the Council with a proforma attached (**Appendix EP1M internal page 207 to 209**);
 - Kidlington Garage – this is some correspondence between the Council and agent in relation to the S106 and conditions (**Appendix EP1N internal page 210 to 228**);



- Station Approach, Banbury – this is an email from the planning agent to the Council dated 31st October 2023 in relation to the S106 (**Appendix EP1O internal page 229 to 231**);
- Salt Way East – this is an email from Persimmon in relation to build out rates (**Appendix EP1P internal page 232 to 236**);
- Station Road, Hook Norton – this is an email from the planning agent to the Council confirming a pre-application meeting and a letter acknowledging the same (**Appendix EP1Q internal page 237 to 239**);
- Deerfields Farm – this is an email from the Planning Policy Officer to the owner of the site asking whether there are any plans to submit a reserved matters application at the site (**Appendix EP1R internal page 240 to 241**); and
- Wretchwick Green and Bicester Gateway Business Park – this is email correspondence between Mr Goodall and the Council in relation to the deliverability of these sites and land registry details for Bicester Gateway (**Appendix EP1S internal page 242 to 24**).

8.49 We address each disputed site in the schedule at appendix **EP2**. However, from the outset, we make the following observations.

8.50 Firstly, the e-mail correspondence submitted in support of the Wretchwick Green (**Appendix EP1S internal page 246 to 252**) does not provide clear evidence of deliverability for that site. Indeed, it confirms that the site is not deliverable in the 5YHLS period and should not have been included in the Council’s 5YHLS position at 1st April 2022 either. The email correspondence provided in relation to that site also causes concern about the Council’s approach to including sites in its 5YHLS as we discuss below.

8.51 Within **Appendix EP1S (internal page 249)** is an email from Mr Goodall dated 18th October 2023 commenting on the hearing for Milcombe (which had taken place that day) where he explains that he was not wholly surprised at the close scrutiny to clear evidence at the hearing *“given the lack of written material or approval of RM for all the forecasts we rely on for the remainder of the five year period”*.

8.52 In the same email, Mr Goodall also asked questions about the deliverability of Wretchwick Green. Also, within **Appendix EP1S (internal page 250)** is the response provided by the Team Leader for the South Area Major Projects Team, dated 19th October 2019 which states:

“Redrow indicated they would have acquired the site early in 2024 so this may give some urgency to when submissions are made. In a meeting earlier this year they indicated they wouldn’t be able to enable any delivery / occupations until 2028/29 because of the utility capacity issues at Bicester – this may have changed or things might change (the Council is looking at utilities at Bicester given this is a huge constraint)” (our emphasis)



8.53 Mr Goodall's response on 19th October 2023 in **Appendix EP1S (internal page 247)** explains that it would be better to concede this site going forward rather than air any "dirty laundry" surrounding the utilities issue. In the same email, Mr Goodall explains that having a developer on board is "not enough in itself". The response from the South Area Major Projects Team Leader on 19th October 2023 explains that they agreed but asked the Policy Officer whether this would be consistent with the new AMR and asks where the Council would be if they conceded this site "and others...".

8.54 Mr Goodall then responds on 19th October 2023 to:

- advise that the Council should not use the Statement of Common Ground process to concede any sites and instead leave it for Inspectors to come to a view;
- advise that the Council only had a realistic prospect of "winning" some of the disputed sites and that at 1st April 2022 it only had a deliverable supply of 3,818 dwellings, which would equate to 4.9 years against the local housing need of 742 dwellings per annum; and
- requests a further response on Salt Way in relation to how clear evidence for the 113 dwellings on that site without reserved matters could be demonstrated.

8.55 The comments provided in the document called: "Sites Appellant Claims Lack Clear Evidence" (**Appendix EP1A**) for Wretchwick Green then state:

"Developer submission (Boyer Planning for Redrow Homes) received 23 October 2023 suggests that development will not commence until 2029."

8.56 Therefore, the Council knew that the Wretchwick Green site was not deliverable at 1st April 2023 by 23rd October 2023 and still:

- Maintained that it was deliverable at 1st April 2022 at the Fringford appeal hearing, which took place on 25th October;
- Maintained that it was deliverable at 1st April 2022 at the Deddington appeal decision. That decision issued on 8th December 2023 concluded there was a 5 year supply, by 9 dwellings. However, the LPA maintained the site was deliverable but if it had been conceded then the Deddington Inspector would have concluded there was not a 5 year supply; and
- Continued to claim that the site was deliverable in the draft 2023 AMR as set out in the version that was published on 24th November 2023.

8.57 The Wretchwick Green site was removed from the Council's 5YHLS before the meeting of the Executive. The comments for that site in the AMR are:

"Supply of 50 dwellings included in year 5 of 5 year land supply for South East Bicester with limited evidence of deliverability."



8.58 As above, Mr Goodall considered that there was not a realistic prospect that the Council could demonstrate a 5YHLS at 1st April 2022 against the local housing need of 742 dwellings per annum.

8.59 Secondly, the document called: “Sites Appellant Claims Lack Clear Evidence” (**Appendix EP1A**) has been provided by the Council in support of its 5YHLS position. However, it identifies 500 dwellings on 10 sites which the Council considers are **“Severely at risk”**. These sites are all category b) sites, either without planning permission or with outline planning permission without reserved matters applications pending determination. It is unclear how on the one hand the Council claims that it has the clear evidence of deliverability for these sites and on the other identifies them as “severely at risk”.

8.60 The following table lists the sites the Council has identified as severely at risk, their capacity and the number of dwellings the Council includes in its 5YHLS on them. We have provided the planning status of each site at the base date and now.

Table 8.1 – Sites the Council has identified as “Severely at Risk”

Address	Capacity	Council’s 5YHLS	Status at base date (1 st April 2023)	Status now (January 2024)
Bicester Gateway Business Park, Wendlebury Road	273	50	Outline planning permission for mixed use. No application for RM for residential.	No change
Canalside, Banbury	63	63	No planning permission. Outline planning permission expired in June 2022. Outline planning application submitted in May 2022 pending determination.	No planning permission. A resolution to grant outline planning permission subject to a S106 agreement was made in July 2023 but the S106 has not been signed.
Bankside Phase 2 (Banbury 4)	350	50	No planning permission. Outline planning application for 825 dwellings submitted June 2019, a resolution to grant permission was made at committee in July 2021 subject to S106.	No planning permission. The S106 has still not been signed.
Land Opposite Hanwell Fields Recreation, Adj To	78	78	No planning permission. A resolution to grant an outline planning	No planning permission.



Address	Capacity	Council's SYHLS	Status at base date (1 st April 2023)	Status now (January 2024)
Dukes Meadow Drive, Banbury			application for up to 78 dwellings subject to a S106 was made in April 2022.	The S106 has still not been signed.
Land Adjoining Withycombe Farmhouse Stratford Road A422 Drayton	250	50	No planning permission. A resolution to grant outline planning permission was made in February 2023 subject to a S106.	No planning permission. The S106 has still not been signed.
OS Parcel 2778 Grange Farm North West Of Station Cottage Station Road Launton	65	65	Outline planning permission, which had been granted at appeal in November 2022.	Outline planning permission. Some discharge of conditions made but no application for reserved matters.
Land at Deerfields Farm Canal Lane, Bodicote	26	26	Outline planning permission, which had been granted in November 2022. No RM application.	No change.
OS Parcel 3489 Adjoining And South West Of B4011, Ambrosden	75	60	No planning permission A resolution to grant outline permission for 75 homes as made in February 2023 subject to a S106 agreement	No planning permission. The S106 has not been signed.
Land North Of Railway House, Station Road, Hook Norton	43	43	Outline planning permission approved at appeal in August 2022. No RM Application	No change.
Kidlington Garage, 1 Bicester Road, Kidlington	15	15	No planning permission A resolution to grant full planning permission for 15 flats was made in March 2023 subject to a S106 agreement	No planning permission S106 has not been signed
Total		500		



8.61 Thirdly, in addition to the above, **Appendix EP1A** also lists three sites “with pending or further RM submissions required”. The table below lists these sites, their capacity and the number of dwellings the Council includes in its 5YHLS on them. We have provided the planning status of each site at the base date and now.

Table 8.2 – Sites the Council has identified as “sites with pending or further RM submissions required”

	Address	Capacity	Council’s 5YHLS	Status at base date (1 st April 2023)	Current status (January 2024)
K	Former RAF Upper Heyford	1,175	488	Outline planning permission for 1,175 dwellings with RM for 138 dwellings.	No further RM applications on this phase to date
L	Drayton Lodge Farm	320	250	Outline planning permission for 320 dwellings approved and RM pending.	RM approved.
M	Banbury 17 – South of Salt Way East	1,000	400	Outline planning permission for 1,000 dwellings	No further RM applications submitted.
	Total		1,138		

8.62 We provide our comments on these sites in Appendix **EP2**. However, the evidence the Council relies on for two of these sites contradicts the position set out in the AMR:

- At South of Salt Way East, the developer explains that the trajectory for the site should include 250 dwellings in the 5YHLS period (**Appendix EP1P**). However, the AMR includes 400 dwellings in the 5YHLS period; and
- At Drayton Lodge Farm, the developer explains that the trajectory for this site should be 30 dwellings in 2024 and 50 dwellings after i.e. 180 in the 5YHLS period (**Appendix EP1K**). However, the AMR includes 250 dwellings in the 5YHLS period.



- 8.63 There is no reference to the actual estimates provided by the developers in the AMR. The evidence was only provided at our request.
- 8.64 Finally, we respectfully invite the Inspector to consider the evidence the Council has provided in support of its category b) sites against that which was rejected as clear evidence by the Secretary of State and Inspectors in Braintree, South Oxfordshire, West Oxfordshire, South Kesteven as well as the recent decisions at Deddington and Milcombe. As in those cases, the evidence the Council has provided falls significantly short of clear evidence of deliverability.
- 8.65 We now provide our assessment of the Council's 5YHLS as set out in the AMR.



9. Disputed sites

9.1 For the reasons set out in Appendix **EP2**, we dispute the inclusion of the following sites which do not have planning permission:

Table 9.1 – Disputed sites without detailed planning permission

	LPA ref:	Address	Capacity (Net)	LPA 5YHLS	Appellants' 5YHLS	Difference
A	18/00293/OUT	Canalside, Banbury	63	63	0	-63
B	19/01047/OUT Banbury 4	Bankside Phase 2	350	50	0	-50
C	21/03426/OUT	Land opposite Hanwell Fields Recreation, Adjacent to Dukes Meadow Drive, Banbury	78	78	0	-78
D	22/02101/OUT	Land adjoining Withycombe Farmhouse, Stratford Road (Banbury Rise Phase 2)	250	50	0	-50
E	21/04112/OUT	OS Parcel 2778 Grange Farm North West Of Station Cottage Station Road Launton	65	65	0	-65
F	19/02350/OUT	Land at Deerfields Farm, Canal Lane, Bodicote	26	26	0	-26
G	22/01976/OUT	OS Parcel 3489 Adjoining And South West Of B4011, Ambrosden	75	60	0	-60
H	21/0500/OUT	Land North Of Railway House, Station Road, Hook Norton	43	43	0	-43



	LPA ref:	Address	Capacity (Net)	LPA 5YHLS	Appellants' 5YHLS	Difference
I	22/00017/F	Kidlington Garage, 1 Bicester Road, Kidlington	15	15	0	-15
J	18/00825/HYBRID	Former RAF Upper Heyford	1,175	488	138	-350
K	18/01882/OUT Banbury 18	Drayton Lodge Farm, Banbury	320	250	180	-70
L	14/01932/OUT Banbury 17	South of Salt Way East	1,000	400	237	-163
M	14/02121/OUT Bicester 1	North West Phase 2	1,700	100	0	-100
N	21/03523/OUT	Former RAF Upper Heyford	31	31	0	-31
	Windfall Allowance			250	200	-50
	Total					-1,297

9.2 We also dispute the inclusion of the three Partial Review sites as shown in the following table.

Table 9.2 – Disputed Partial Review sites

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



10. Matters not agreed: 4YHLS

10.1 As above, paragraph 77 of the Framework states:

“In all other circumstances, local planning authorities should 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 apply⁴¹. 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 old⁴². Where there has been significant under delivery of housing over the previous three years⁴³, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period). National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.”

10.2 Paragraph 77 therefore explains that a minimum of four years’ worth of housing applies “if the provisions in paragraph 226 apply”. Paragraph 226 of the revised NPPF is new and states:

“From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old⁸⁰, instead of a minimum of five years as set out in paragraph 77 of this Framework. **This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76.** These arrangements will apply for a period of two years from the publication date of this revision of the Framework.” (emphasis added)

10.3 Footnote 80 states:

“Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a four year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance”



- 10.4 Paragraph 226 does not mean that Cherwell must only demonstrate a 4YHLS because the recent regulation 18 consultation did not include a policies map. This point is addressed in detail in the general planning Statement of Case.
- 10.5 If the Inspector disagrees, and the 4YHLS provision were to apply, then Cherwell cannot demonstrate a 4YHLS for the reasons set out below.

Four Year Housing Land Supply

- 10.6 As above, paragraph 226 of the Framework states:

“certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old”

- 10.7 This reflects the wording set out in paragraph 77 of the Framework where a 5YHLS is to be demonstrated. Therefore, if paragraph 226 applies, it must follow that this is a 4 year supply is to be tested against a 4 year requirement in the same way as a 5 year supply is to be tested against a 5 year requirement.
- 10.8 Paragraphs 77 and 226 do not state that where a 4YHLS is required, the LPA is required to have at least a four year supply of deliverable housing sites against its five year housing supply requirement. Within this context, it is of note that the wording in paragraph 14c of the previous version of the Framework (in relation to a 3YHLS for neighbourhood plans) stated:

“the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74)”

- 10.9 The relevance of this is that whilst paragraph 14c of the previous version of the Framework essentially required a lower than 5 year supply against the 5 year requirement in those circumstances, it expressly said so. The wording of the revised Framework does not support the same approach for a 4YHLS.
- 10.10 The trajectory in the AMR provides the following supply over the 4 year period 2023/24 to 2026/27. This is the Council’s claimed supply over the 5YHLS period with year 5 (i.e. 2027/28) removed:

Table 10.1 – Cherwell’s 4YHLS over 2023-27

	2023/24	2024/25	2025/26	2026/27	4YHLS
Cherwell	853	761	703	890	3,207



Partial Review	0	0	0	0	0
Total	853	761	703	890	3,207

10.11 Against a single four year requirement of 4,400 dwellings (710 for Cherwell X 4 years = 2,840 plus stepped requirement for Oxford's unmet needs of 1,560 dwellings over 4 years⁵⁷), this equates to 2.9 years. This calculation does not include the shortfall of 680 dwellings against the requirement set out in the partial review.

10.12 If separate calculations should be made, then the Council's supply figure for Cherwell equates to 4.5 years (i.e. 3,207 / 710 = 4.52 years) and 0 years for Oxford's unmet needs. On any basis, it remains the case that there is a very substantial shortfall (in fact, no supply at all) for Oxford having regard to the minimum requirements of the Framework and therefore the tilted balance set out in paragraph 11d is engaged.

10.13 However, the Appellant's case is that the Council has not provided clear evidence for the inclusion of several sites in the deliverable supply in Cherwell as shown in the following table. These are the disputed sites set out above. However, year 5 (i.e. 2027/28) has been removed. This means that 612 dwellings should be removed from Cherwell's 4YHLS of 3,207, leaving 2,595 dwellings.

Table 10.2 - List of disputed sites and impact on the 4YHLS

Site		2023/24	2024/25	2025/26	2026/27	4YHLS	Difference in 4YHLS
A - Canalside, Banbury	Council	0	0	0	33	33	-33
	Appellants	0	0	0	0	0	
B - Bankside Phase 2	Council	0	0	0	0	0	0 ⁵⁸
	Appellants	0	0	0	0	0	
C - Hanwell Fields	Council	0	0	0	28	28	-28
	Appellants	0	0	0	0	0	
	Council	0	0	0	0	0	0 ⁵⁹

⁵⁷ 340 dwellings per annum for 2023/24 to 2025/26 and 540 in 2026/27

⁵⁸ The Council's 5YHLS for this site relied on delivery in year 5 only (i.e. 2027/28)

⁵⁹ The Council's 5YHLS for this site relied on delivery in year 5 only (i.e. 2027/28)



Site		2023/24	2024/25	2025/26	2026/27	4YHLS	Difference in 4YHLS
D - Withycombe Farmhouse	Appellants	0	0	0	0	0	
E - Grange Farm	Council	0	0	0	30	30	-30
	Appellants	0	0	0	0	0	
F - Deerfields Farm	Council	0	0	0	26	26	-26
	Appellants	0	0	0	0	0	
G - OS Parcel 3489, Ambrosden	Council	0	0	0	25	25	-25
	Appellants	0	0	0	0	0	
H - North of Railway House	Council	0	0	0	25	25	-25
	Appellants	0	0	0	0	0	
I - Kidlington Garage	Council	0	0	15	0	15	-15
	Appellants	0	0	0	0	0	
J - Former RAF Upper Heyford	Council	143	194	198	175	710	-200
	Appellants	143	194	123	50	510	
K - Drayton Lodge Farm	Council	0	50	50	75	175	-45
	Appellants	0	30	50	50	130	
L - South of Salt Way - East	Council	50	75	75	100	300	-100
	Appellants	50	50	50	50	200	
M - NW Bicester 2	Council	0	0	0	50	50	-50
	Appellants	0	0	0	0	0	
N – RAF Upper Heyford	Council	0	0	0	10	10	-10
	Appellants	0	0	0	0	0	
	Council	0	0	0	125	125	-25



Site		2023/24	2024/25	2025/26	2026/27	4YHLS	Difference in 4YHLS
Small sites windfall allowance	Appellants	0	0	0	100		
Total							-612

10.14 The Appellants' 4YHLS figure for Cherwell of 2,595 dwellings equates to a 4YHLS (against the local housing need for Cherwell only over 4 years) of 3.67 years (i.e. $2,595 / 710 = 3.65$ years. There would be a supply of 0 years for Oxford's unmet needs. Again, this is a failure to meet the minimum requirements of national policy and the tilted balance to the presumption in favour of sustainable development set out in paragraph 11d of the Framework is engaged.

10.15 In summary, for the reasons set out above, the Appellant's view is that the provisions in paragraph 226 of the revised NPPF do not apply in Cherwell. If the Inspector disagrees then a 4 year housing supply against a 4 year housing requirement cannot be demonstrated either on a single calculation or separate calculations. On any basis, the Council is failing to comply with the minimum requirements of national policy relating to maintaining an adequate supply of housing and the tilted balance to the presumption in favour of sustainable development is engaged.



11. Conclusions

11.1 We have reviewed the Council's deliverable supply figures and conclude that 1,297 dwellings should be removed from the Council's 4,121 figure because the Council has not provided "clear evidence" required for their inclusion and therefore these sites are not deliverable. We also conclude that the Council has not provided any "clear evidence" required for the inclusion of any of the Partial Review sites. Our 5YHLS position is set out in the table below.

Table 11.1 – 5YHLS positions at 1st April 2023 against a single requirement of local housing need of 710 dwellings p.a. plus Oxford's unmet need (no buffer)

	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 st April 2023	4,201	2,824
Years supply	3.32	2.23
Undersupply	-2,129	-3,506

11.2 The Appellant does not consider that the 4YHLS provision applies to Cherwell because the recent regulation 18 consultation did not include a policies map. However, if the Inspector disagrees and concludes that the 4YHLS provision applies then even on its supply figures, the Council cannot demonstrate a 4YHLS if a single calculation is made as shown in the following table:



Table 1.4 – 4YHLS positions at 1st April 2023 against a single requirement of local housing need of 710 dwellings p.a. plus Oxford’s unmet need (no buffer and not including the shortfall)

	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
Four year requirement	4,400	4,400
Annual requirement	1,100	1,100
4 year deliverable supply at 1 st April 2023	3,207	2,595
Years supply	2.91	2.36
Undersupply	-1,193	-1,805

11.3 If the Inspector disagrees and concludes that separate HLS calculations are consistent with the Framework, then the Appellant’s case is that a 5YHLS cannot be demonstrated as shown in the following table:



Table 1.5 - Appellant's 5YHLS at 1st April 2023 – separate calculations (no buffer)

		Appellants' position for Cherwell solely against the LHN	Appellants' position on Oxford's Unmet Housing Need
	Requirement		
A	Annual requirement	710	420 ⁶⁰
B	Undersupply to be addressed in 5YHLS period	0	680
C	Total 5YHLS requirement (A X 5 + B)	3,550	2,780
D	Annual requirement plus (C / 5)	710	556
	Supply		
E	Appellants' supply	2,824	0
F	Supply in years (E / D)	3.98	0
G	Under supply (F – C)	-726	-2,780

11.4 The policy implications of the above conclusions are addressed in the general statement of case.

⁶⁰ i.e. 340 dwellings per annum 2023-26 and 540 dwellings per annum in 2026-28 = 2,100 / 5 = 420



12. Appendices

EP1. LPA background evidence documents

EP2. Site Assessments

EP3. AMR

EP4. HLSPS January 2024 update

EP5. Appeal decisions:

A – 3325113 – Heath Close, Milcombe – 12th December 2023

B – 3314936 – Trumans Farm, Manor Lane, Gotherington – 11th September 2023

C – 3284820 - Hill End Road, Twyning

D – 3289643 – Land at Leigh Sinton Farms, Malvern – 5th July 2022

E – 3310788 – Land east of Grove, Grove – 13th March 2023

F - 2197532 and 2197529 – Audlem Road, Nantwich appeal decision – 15th July 2020

G - 3227970 – Cox Green Road, Surrey appeal decision – 16th September 2019

H - 3284485 – Station Road, Stallbridge, North Dorset – 20th June 2022

I - 3270721 – Westhampnett / North East Strategic Development Location, North of Madgwick Lane, Chichester appeal decision – 27th May 2022

J - 3194926 – Woolpit appeal decision - 28th September 2018

K - 3169314 - Woburn Sands, Milton Keynes appeal decision – 25th June 2020

L - 2212671 – Darnhall School Lane appeal decision – 4th November 2019

M - 3180729 – Gleneagles Way, Hatfield Peveril appeal decision – 8th July 2019

N - 3216104 – Popes Lane, Sturry appeal decision – 3rd September 2019

O - 3292721 – Land off Spruce Close, Exeter appeal decision – 25th August 2022

P - 3265861 – Sonning Common appeal decision – 25th June 2021

Q - 3301202 – West of Wroslyn Road, Freeland appeal decision – 18th January 2023

EP6. Partial Review Inspector's Report

EP7. 2014 Strategic Housing Market Assessment (SHMA)

EP8. 2023 Housing and Economic Needs Assessment (HENA)

EP9. Braintree proformas

EP10. South Oxfordshire evidence

EP11. West Oxfordshire evidence

EP12. South Kesteven proformas



