

Representations to Mid Devon Local Plan Review: Council's Response to ID12

Representations on behalf of Gallagher Estates
Ltd

August 2019

Turley

Contents

1.	Introduction and Background	3
2.	Setting Realistic Delivery Assumptions	5
3.	Site Specific Assessments	16
4.	Conclusions	24
Appendix 1: Extracts of Decisions		26
Appendix 2: Jubb Note		27

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Our reference
GALA3002

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1. Introduction and Background

- 1.1 These representations have been prepared on behalf of our client, Gallagher Estates Ltd ("Gallagher Estates").
- 1.2 Gallagher Estates has interests within Mid Devon, specifically at Willand, which includes the currently proposed allocation W11 (Land east of M5, Willand) which is currently identified for 42 dwellings within the Draft Local Plan. Gallagher Estates land interest at Willand represents a sustainable and deliverable opportunity for accommodating additional residential development over the existing proposed allocation, that is realistically capable of making a contribution to the Council's housing land supply.
- 1.3 Representations were previously submitted on behalf of Gallagher Estates to the Proposed Submission Local Plan in April 2015 and the Proposed Main Modifications in February 2017.
- 1.4 Main hearings on the Local Plan Review took place in February 2019. Ahead of these hearings, the Council published a Housing Land Supply Update (dated January 2019). The document was submitted with little time for review ahead of the examination hearing sessions.
- 1.5 At the examination hearing sessions, numerous participants (including Turley on behalf of Gallagher Estates) stated orally that the January 2019 Housing Land Supply Update:
 - (a) Did not provide sufficient evidence of deliverability in relation to numerous sources of supply;
 - (b) Included questionable and optimistic delivery assumptions in relation to key sites without justification;
 - (c) Did not provide a sufficiently justified basis for the Inspector to determine that the Council could demonstrate a five year housing land supply, which was agreed to affect the soundness of the Plan;
- 1.6 It was therefore requested that a comprehensive update of the Housing Land Supply Paper was provided by the Council to address the concerns of the participants, who would have opportunity to comment in due course.
- 1.7 Subsequently, the Inspector issued a post-hearings advice note (ID12). These representations provide a written response in respect of the Council's draft Housing Land Supply Update (ED20: June 2019) ("the Council's HLS Update") that was prepared in response to ID12.
- 1.8 We submit that the MDDC response does not get anywhere near to adequately addressing the Inspector's "significant concern" to satisfactorily demonstrate that a five year supply will be demonstrable through the 1-5 and 5-10 year periods following adoption of the LP Review. The Council has provided a very limited level of detail in the HLS update report, particularly in respect of the 'commitments' element of supply

despite this element of the trajectory accounting for over 70% of the deliverable housing in this part of the plan period. The Council provides a review of only four sites that are included in the housing supply trajectory we consider a full review is required in order to satisfactory address our concerns on five year supply and supply over the plan period as a whole.

- 1.9 We do not consider that the Council have been reasonable in its assumptions with regards to lead in times and delivery rates over the plan period. The Inspector required a realistic and robust trajectory to be provided which, as we will explain, is still absent from the Council's HLS Update.
- 1.10 Part of our client's site at Willand is proposed to be allocated for 42 dwellings but further land is available. We consider that the Council needs to identify additional land to provide an adequate level of certainty that the housing needs of the District can be met. Site WI1 can be extended and, when including the wider area under our client's control, is capable of delivering up to 259 dwellings.
- 1.11 The January 2019 HLS Update claims the Council can demonstrate a five year housing land supply in a number of scenarios. The June 2019 Update continues to claim this, however, we have significant concerns with some of the assumptions employed in this publication, and consider that with due scrutiny the misrepresented strength of the Council's five year supply could cause a fundamental soundness issue in the Plan. Insufficient evidence has been prepared to address the concerns raised by the Inspector that the Council will find it *'difficult or impossible to show a five-year supply of deliverable housing sites'*.
- 1.12 **Accordingly, we request that the Council produce another update to the published housing land supply position, properly taking into account the comments of the participants (including comments made in this representation) and incorporating realistic delivery assumptions based on robust evidence throughout the trajectory, as requested by the Inspector.**
- 1.13 **In addition, to ensure sufficient levels of flexibility and to ensure a five year housing land supply is maintained, it is our view that the Council should take up the Inspector's suggestion to consider extending existing allocations to accommodate more dwellings, such as the Policy WI1 site.**
- 1.14 The remaining sections of this report are structured as follows:
 - Section 2 considers the general assumptions made with regards to lead in times, delivery rates and the methodology applied by the Council, it also includes a review of government and industry guidance on housing trajectories;
 - Section 3 considers specific sites and claimed sources of supply and refers back to the findings in section 2; and
 - Section 4 provides conclusions and recommendations.

2. Setting Realistic Delivery Assumptions

- 2.1 As directed by the Inspector, realistic delivery assumptions should be adopted when setting out the anticipated trajectory of housing supply as part of the Local Plan Review. We consider this logically separates into two elements:
- Lead in times – how long it takes realistically for development to commence and housing completions to be delivered from sites which stand with differing planning statuses and infrastructure burdens;
 - Delivery rates – assumptions in relation to how many completions can be achieved over time on a site given its size and nature, and market competition and absorption.

Lead In Times

- 2.2 There is very little detailed information from the Council regarding lead in times for the majority of sites within its housing trajectory. We are particularly concerned that there is insufficient evidence for the ‘commitments’ element of supply given that this makes up such a large proportion of their overall supply within the plan period. In addition, we assume, in the absence of the detail being provided, that a significant part of the ‘commitments’ source are made up of small sites and without knowing the detail we are not in any position to understand whether the lead in times applied to these sites are accurate.
- 2.3 The assumptions on the supply claimed within the publication are based upon the Council’s ‘HELAA model’ which appears to be based on a small evidence base of just three relatively small sites (74 to 259 dwellings total) which the Council claim to have applied throughout their trajectory. We do not consider this is a robust model given the small sample.
- 2.4 Specific consideration is also required for large outline planning permissions (over 500 units), particularly when they form a central part of a Council’s spatial strategy, where they would be expected to be submitted in outline, and where they require significant infrastructure delivery. Notably long lead in times can often be seen from proposals of this nature, and the Council’s ‘HELAA model’ is not fit for use in realistically assessing the deliverability of sites of this scale and nature given that it is based on limited evidence of smaller sites.
- 2.5 To deliver strategic scale schemes of this nature there are numerous, and complex steps and barriers to be undertaken and overcome. These stages vary depending on the nature of the site, and method of promotion/acquisition. Broadly however the process can include, but is sometimes not limited to:

Table 1: Stages towards completions

Stage
Allocation in Development Plan

Site acquisition
EIA Scoping and Screening
Preparation of Outline planning application including collation of evidence base, survey data, development of masterplan
Public consultation
Achieving a resolution to grant planning permission
Completion of Section 106 to achieve outline planning permission
Overcoming period of legal challenge
The disposal of the phases to suitable developers (if required) and the agreement and exchange of contracts, including securing relevant insurances, finance and legals
Undertaking survey works and preparation of information for submission to discharge conditions
Discharge and agreement of pre-commencement conditions
Discharge of S106 obligations
Design, approval and completion of preparatory site works
Completion of infrastructure works
Public consultation and preparation of reserved matters
Submission and determination of reserved matters
Discharge of further pre-commencement conditions
Preparatory site works
Construction of homes
Discharge and fulfilment of pre-occupation conditions and requirements
Homes completed and occupied

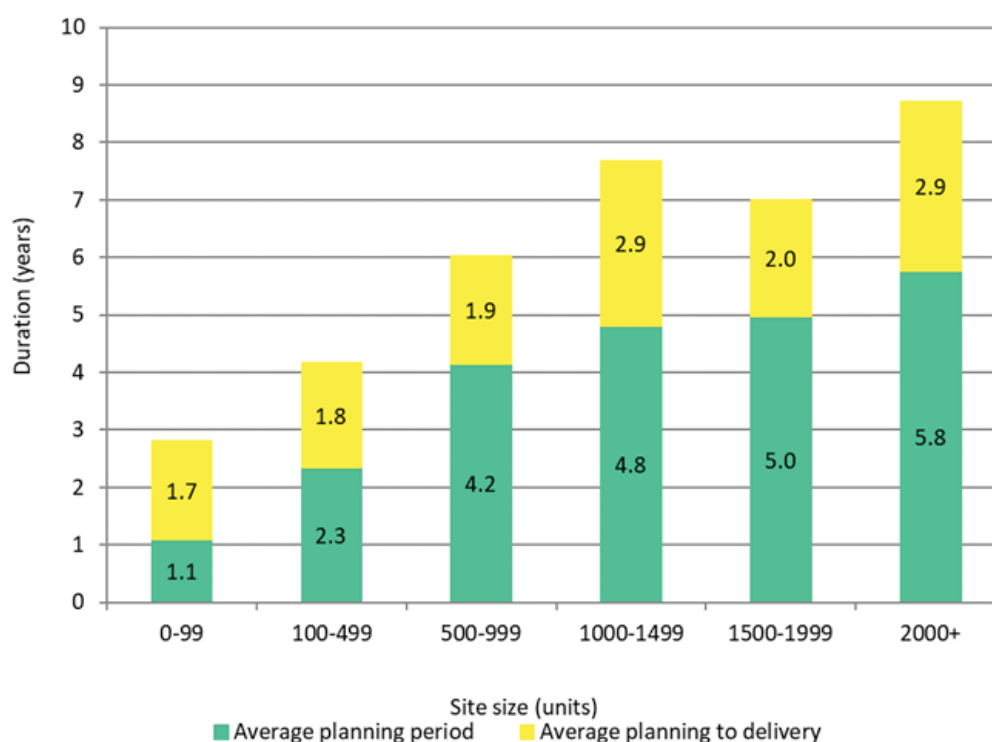
- 2.6 It is widely acknowledged that due to their complexity, the lead in times for delivery of large residential sites can be substantial.
- 2.7 We have undertaken a literature review of recent industry research associated to the issue of lead in times for schemes of scale. The sources and conclusions for relevant site sizes are summarised below, and relevant extracts can be provided.

Table 2: Assessments of large sites delivery

Report	Author	Site Size	Lead In Time
A Report into the Delivery of Urban Extensions	Hourigan Connolly (2014)	500 + units	8 years from preparation of outline to completions
Urban Extensions	Savills (2014)	500 + units	5 years from submission of

Assessment of Delivery Rates			outline to commencement of first phase
Start to Finish	NLP (2016)	500 + units	5.3 to 6.9 years from submission to first housing delivery
Role of Land Pipelines in Housebuilding	Barratt (2017)	150 homes or more	5.8 years from acquisition to completions

- 2.8 A recent update to Lichfields' 'Start to Finish' report¹ referenced in the above table was published in October 2018. This included more up to date data, and additional sites in the study, and found the following lead in times for a range of site sizes:



- 2.9 The conclusion is very clear. The lead in times for housing completions delivered on strategic scale residential sites is significant in any case. In some cases however, as is relevant to this LPA, the process can become more complex and the lead in times can be even more substantial than those set out above when there are specific issues to resolve; like those in Cullompton where work is required to improve the strategic highways network, which is out of the control of the Applicants and/or developers
- 2.10 We turn to consider the specific timings for the delivery of TCRR in Cullompton later in this report, however given all of the above evidence; we consider that a realistic lead in

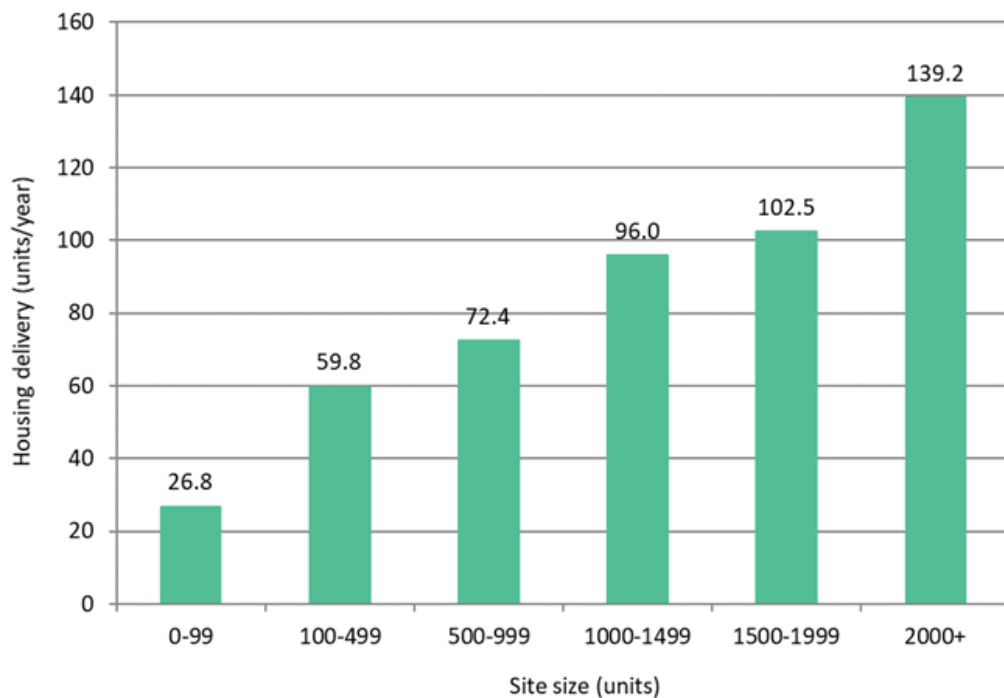
¹ Lichfields Blog Post 29 Oct 2018, available at: <https://lichfields.uk/blog/2018/october/29/driving-housing-delivery-from-large-sites/>

time from the submission of an outline planning application to seeing dwelling completions on a site larger than 500 units should be **a minimum of 6 years**.

Delivery Rates

- 2.11 For larger sites, average annual delivery rates also need to be considered specifically. In November 2016, Lichfields produced a report which includes an assessment of the average delivery rates from large housing sites across the UK. This looked at 70 large sites which provides a reasonable sample upon which to draw assumptions in relation to delivery rates for large sites.
- 2.12 The following average delivery rates for greenfield sites were identified within that Report:
- On sites of 500 – 999 dwellings, the average annual delivery rate was **86 dwellings per annum**;
 - On sites of 1,000 to 1,499 dwellings, the average annual delivery rate was **122 dwellings per annum**;
 - On sites of 1,500 to 1,999 dwellings, the average annual delivery rate was **142 dwellings per annum**; and
 - On sites of 2,000 or more dwellings, the average annual delivery rate was **171 dwellings per annum**.
- 2.13 We note the Council have limited experience in the Authority area of the delivery of large sites, or any more reliable dataset to rely on in this regard. The Lichfield's study takes into account delivery rates of the Cranbrook new settlement recently delivered in Devon.
- 2.14 The Report also considers the proportion by which delivery rates increase as the site size increases. At page 14 the Report concludes that, on average, a site of 2,000 or more dwellings does not deliver four times more dwellings than a site delivering between 50 and 499 dwellings. Despite being four times the size, it was found that a site of 2,000 or more dwellings on average only delivers 2.5 times more housing. The number of sales outlets does not always increase in direct proportion to the site size and market absorption rates are also a factor to consider. Overall it is clear that the number of outlets will not be a fixed multiplier in relation to the delivery of homes.
- 2.15 The October 2018 update to Lichfields' 'Start to Finish' report², included more up to date data, and additional sites in the study. This report found the following delivery rates on the range of site sizes:

² Lichfields Blog Post 29 Oct 2018, available at: <https://lichfields.uk/blog/2018/october/29/driving-housing-delivery-from-large-sites/>



- 2.16 This more up to date evidence actually points towards lower delivery rates than the November 2016 Report, the results of which were reported above.

Market Absorption

- 2.17 In addition to Lichfields' work in 2016, average build rates and market absorption has been further considered in the recent Independent Review of Build Out Rates by Sir Oliver Letwin in 2018.
- 2.18 Paragraph 3.4 of the Draft Analysis (June 2018) confirmed that there is a clear negative relationship between the size of the site and the percentage of the site built out each year, reflecting the findings of the Lichfield's Report two years earlier.
- 2.19 The Final Report of the Letwin Review, published in October 2018, principally found that:
- The median percentage of the site built out each year on average through the build out period on 15 large sites was 6.5%; and
 - The homogeneity of the types and tenures of the homes on offer on these sites, and the limits on the rate at which the market will absorb such homogenous products, are the fundamental drivers of the slow rate of build out.
- 2.20 Mid Devon's Local Plan Review (LPR) seeks to plan for numerous large housing schemes to come 'on stream' and start delivering at a similar point in time during the plan period – notably at Cullompton. At the point that all of these sites are anticipated to deliver, there is potential for the market absorption concerns raised by Letwin to materialise. The findings of the Letwin report are generalised and likely to be even more applicable in a weaker, rural market. It is partly due to the 'Letwin effect' that we

consider a reasonable amount of caution should be applied to the delivery from the large allocations which form the basis of the Council's spatial strategy.

The 2019 NPPF Definition of Deliverable

2.21 Although the LPR will need to be examined against the policies of the original NPPF (March 2012), it is an important consideration to note that the revised NPPF will be the policy framework against which the Council's five year housing land supply will be tested in applications (and likely appeals) immediately following the adoption of the Plan.

2.22 The February 2019 NPPF glossary includes a revised definition of 'deliverable', as follows:

"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."

2.23 The NPPF, updated in July 2018 and again in February 2019, shifts the burden of proof that a site is deliverable onto the Local Planning Authority, and raises the bar for what can be considered deliverable, namely that this needs to include 'clear evidence'.

2.24 The July 2019 PPG states the following in relation to what constitutes 'clear evidence':

"What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking?

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

- *have outline planning permission for major development;*
- *are allocated in a development plan;*
- *have a grant of permission in principle; or*

- *are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

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

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

Paragraph: 007 Reference ID: 68-007-20190722

- 2.25 The 2019 NPPF definition of deliverable and its correct interpretation has been considered by Inspectors in multiple recent appeal decisions which we consider are highly relevant to the assessment of housing land supply in this case. We have included relevant extracts of these decisions at **Appendix 1** which are referred back to throughout this report:

- Land at East Side of Green Road, Woolpit, Suffolk (APP/W3520/W/18/3194926);
- Entech House, London Road, Woolmer Green (APP/C1950/W/17/3190821);
- Longdene House, Hedgehog Lane, Haslemere (APP/R3650/W/16/3165974); and
- Land off Colchester Road, Bures Hamlet, Essex (APP/Z1510/W/18/3207509).

- 2.26 It is clear that, within these appeals, Inspectors have taken a very strict view in respect of what constitutes a deliverable site and the clear evidence that is required. This is clearly relevant given that, immediately upon adoption, the Council will need to be able to defend its supply position against the 2019 NPPF definition of a deliverable site.

- 2.27 Considering the NPPF definition of deliverable and accompanying guidance, the following principles are established from the recent case law:

- The onus is on the LPA to demonstrate ‘clear evidence’ (Woolpit, Haslemere);

- Clear evidence (such as a detailed planning permission or signed S106) received post the end of the monitoring period (in this case 31st March 2018) should be discounted (Woolpit, Haslemere, Bures Hamlet);
- Emerging allocations should not be considered deliverable unless clear evidence is presented, the onus being on the LPA to do so (Woolmer, Haslemere);
- The findings of the St Modwen judgment on sites being ‘capable of delivery’ in the five year period are superseded by the revised NPPF definition of deliverable (Woolpit and Woolmer); and
- Sites with a resolution to grant Planning Permission should not automatically be considered deliverable (Bures Hamlet).

2.28 The revised NPPF is a material consideration for decision taking from the day of its publication, and replaces the policies of the first NPPF (March 2012).

Developable and 6-10 Year Supply

2.29 The July 2019 PPG on Housing Land Supply also includes guidance on the consideration of 6-10 year supply and what constitutes a developable site. This is highly relevant to this representation given the LPR Inspectors concern over MDDC 5-10 year supply.

“Is it essential to identify specific developable sites or broad locations for housing growth, beyond 5 years?”

As set out in the National Planning Policy Framework, local planning authorities should identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. Local plans and spatial development strategies may be able to satisfy the tests of soundness where they have not been able to identify specific sites or broad locations for growth in years 11-15. However, if longer-term sites are to be included, for example as part of a stepped requirement, then plan-makers will need to demonstrate that there is a reasonable prospect that they are likely to come forward within the timescale envisaged.”

Paragraph: 019 Reference ID: 68-019-20190722 Revision date: 22 July 2019

“How can plan-making authorities demonstrate there is a reasonable prospect that housing sites are ‘developable’?”

Annex 2 of the National Planning Policy Framework defines what constitutes a developable site. In demonstrating that there is a ‘reasonable prospect’ plan-makers can use evidence such as (but not exclusively):

- *written commitment or agreement that relevant funding is likely to come forward within the timescale indicated, such as an award of grant funding;*
- *written evidence of agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;*

- likely buildout rates based on sites with similar characteristics; and
- current planning status - for example, a larger scale site with only outline permission where there is supporting evidence that the site is suitable and available, may indicate development could be completed within the next 6-10 years.

A pragmatic approach is appropriate when demonstrating the intended phasing of sites. For example, for sites which are considered developable within 6-10 years, the authority may need to provide a greater degree of certainty than those in years 11-15 or beyond. When producing annual updates of the housing land supply trajectory, authorities can use these to provide greater certainty about the delivery of sites initially considered to be developable, and those identified over a longer time span.

Further guidance is provided in the plan-making chapter about how authorities can demonstrate that strategic matters can be delivered within a particular timescale. Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the developability of sites.”

Paragraph: 020 Reference ID: 68-020-20190722

Buffer

- 2.30 The Council's Core Strategy was adopted in 2007 and examined prior to the National Planning Policy Framework (March 2012).
- 2.31 As shown in Table 3 below, the Council have already accumulated a shortfall of 235 dwellings against the Local Plan Review requirement by failing to meet the target delivery figure in four out of the five years elapsed in the plan period to date (within the June 2019 update).

Table 33: Delivery Against Requirement in to date in Plan Period

Year	Completions	Local Plan Review Annual Requirement	Performance against the requirement	Cumulative Performance against requirement
2013/14	320	393	-73	-73
2014/15	316	393	-77	-150
2015/16	288	393	-105	-255
2016/17	304	393	-89	-344
2017/18	502	393	109	-235

- 2.32 The Council have in the year 2017/18 seen completions in excess of the Local Plan Review requirement. However, importantly, this single year of higher delivery is not sufficient to make up for the shortfall accumulated to date and the Council has

cumulatively under delivered against the housing requirement before the LPR has reached adoption.

- 2.33 In addition to the completions in Table 3 above. The Council have historically persistently under delivered against its adopted Core Strategy housing requirements.
- 2.34 Paragraph 73 of the NPPF (February 2019) states that the supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 20% where there has been significant under delivery of housing over the previous three years. From the publication of the Housing Delivery Test (HDT) (November 2018), Paragraph 73 will be measured against the HDT, where this indicates that delivery was below 85% of the housing requirement.
- 2.35 The HDT measurement for 2018 at Mid Devon is 135% and therefore a 5% buffer applies. However the HDT is not assessed against the emerging LPR annual housing requirement, which, as set out above, the Council have already failed to deliver against in four out of the five years to date.

Sedgefield vs. Liverpool

- 2.36 The Council's updated supply (June 2019) provides calculations of five year housing land supply. They have based this on four scenarios for the initial five year period (2018/19 – 2022/23), as follows:
- 'Sedgefield' approach (shortfall delivered over the initial 5 year period) with 20% buffer: 5.30 years supply;
 - 'Sedgefield' approach (shortfall delivered over the initial 5 year period) with 5% buffer: 6.06 years supply;
 - 'Liverpool' approach (shortfall delivered over plan period) with 20% buffer: 5.71 years supply; and
 - 'Liverpool' approach (shortfall delivered over plan period) with 5% buffer: 6.53 years supply.
- 2.37 The Council set out in its response that they consider that the most appropriate approach is to apply a 5% buffer and the 'Liverpool' approach. This runs contrary to the PPG's clear recommendation for dealing with previous undersupply where the advice is that:
- 'The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach) then the appropriate buffer should be applied.'* (Paragraph: 031, Reference ID: 68-031-20190722, 22 July 2019).
- 2.38 We consider the Council should employ the 'Sedgefield' approach in the calculation of 5 year housing land supply for the following key reasons:

- The use of the Liverpool approach to dealing with under-supply is contrary to the PPG's recommended approach.
- Mid Devon has already fallen short of its housing delivery requirements since the start of the plan period overall, in four out of five monitoring years.
- There is a danger that by not seeking to deal with previous undersupply in the short term, that undersupply will continue to be carried forward, with the potential that it will never be dealt with or will continue to worsen. This is compounded by our concerns in the delayed delivery of key strategic allocations set out in Section 3.

2.39 Overall, and as set out in the next section, the Council's response to the Inspector provides very little change between existing assumptions (January 2019 update) and new (June 2019 update), and importantly insufficient additional information has been provided to support the Council's claims for the deliverability of sites over the plan period. The Council provide a review of only four sites that are included in the housing supply trajectory and do not provide any further review of sites within their June 2019 update, against what was suggested by the Inspector. Furthermore, as considered in turn in Section 3 below, the position relating to the four sites has changed since this June 2019 update and new information relating to those sites is available which has implications on the trajectories.

3. Site Specific Assessments

- 3.1 This Section of the report focuses on the site specific assessments provided by the Council. This is comprised of the four large sites for which the Council has provided a review, being; North West Cullompton; East Cullompton; Land at Colebrook, Cullompton; and Higher Town, Sampford Peverell.

The Council's Evidence

- 3.2 The Council's updated Housing Land Supply was published in June 2019 to respond to the Inspector's Post Hearing Advice Note (ID12). Within this note, the Council set out the following changes/updates to the housing trajectory:
- The first year that the East Cullompton allocation (CU7-CU12) is expected to deliver housing has been put back a year to 2023/24. This is based on a 'precautionary approach' which sees the latest delivery of the TCRR by the end of 2023. This ensures that no part of the trajectory in the first five year period is dependent on completion of the TCRR.
 - The site at Higher Town, Sampford Peverell (Policy SP2) is now expected to fully build out within the initial five year period. This reflects the Council's intention to make 'Main Modifications' to Policy SP2 in accordance with the Inspector's advice; these modifications would remove conditions restricting the delivery of the site until later in the plan period.
 - The site 'Land at Colebrook' (Policy CU21) is expected to partially build out within the first five years and is now an allocation rather than a 'contingency' site.
 - No change is proposed to the housing trajectory for the North West Cullompton allocation, however clarification is provided to explain previous site delivery assumptions and how the delivery of the later phase (750 dwellings) takes account of the cautious assumption over the timeframe for delivery of the TCRR for local plan trajectory purposes. It is claimed that an initial phase of 600 dwellings at NW Cullompton can be completed before the TCRR, but will be expected to make financial contributions towards it.
- 3.3 In addition to this, the Council set out that for the purposes of the Local Plan Review's Housing Trajectory, it is assumed that the TCRR will be completed by the end of 2023. This timetable has not been clearly evidenced and is considered unrealistic given the constraints facing the project and the time it will take to deliver.
- 3.4 The Council have had the opportunity to consider the Inspector's comments and are required to provide a realistic and detailed housing trajectory to address the concerns regarding five year supply. In our view, this request has not been adequately met. Insufficient detail has been provided regarding large elements of the supply, unrealistic deliverability assumptions and lead in times have been applied. Fundamentally, no certainty has been provided that the Council will be able to demonstrate a five year

supply on adoption of the plan, nor that the identified housing need over the plan period can realistically be delivered.

- 3.5 From the limited additional information that has been made available it has not been possible to review much of the detail in the Council's claimed supply. A key issue is the 'Commitments' the Council identify and the continued lack of information regarding the components of this source of supply. We have significant concerns regarding the lack of clarity and detail provided for these sites, particularly given they comprise a significant proportion (over 70%) of the anticipated delivery the Council rely upon to show that a five year housing land supply can be demonstrated in the 2018/19-2022/23 period.

Town Centre Relief Road

- 3.6 We have concerns regarding the assumptions that have been made with regard to the timing and deliverability of the key infrastructure required to support the delivery of major components of the Council's housing commitments. In the Council's HLS Update it is assumed that the TCRR will be completed by the end of 2023. They have presented no evidence to support this assumption.
- 3.7 The ability to deliver the TCRR is so fundamentally linked to housing delivery that the Council needs to demonstrate beyond doubt that the TCRR can be delivered within their claimed timescales. Notwithstanding the progression of HIF funding, our view remains that there are significant obstacles to the delivery of the TCRR which means the Council's timescales are unrealistic and possibly unachievable. These obstacles include: land acquisition (which may necessitate CPO), surveys and mitigation provision, obtaining all necessary consents and the construction programme.
- 3.8 Gallagher Estates previous representations to the LPR were accompanied by a note produced by Jubb (January 2019) considering the provision of infrastructure at Cullompton. The note is reattached to this representation at **Appendix 2**.
- 3.9 The Jubb note demonstrates that there are numerous constraints to be overcome in the delivery of the TCRR. Since this note was prepared, a Cabinet meeting in May 2019 heard that a planning application is expected to be submitted to the Council in August 2019, before which the County Council will hold a further public consultation.
- 3.10 The TCRR was granted HIF funding in May 2019, funding is available for the TCRR until 31 March 2021. The draft agreements (referenced in the May 2019 Cabinet report) are to include the start and completion dates for the infrastructure. A further meeting in July 2019 stated that consideration was given to the time limitations set by Homes England for the TCRR and whether negotiations could take place to alter the milestones. There are no further updates or information to specify the milestones for the TCRR, our view is that the delivery of this road is still subject to an extensive number of technical and practical constraints that could affect the timescales for construction and completion. It remains our view that the lack of clarity regarding this infrastructure will be likely to have an impact on the overall housing trajectory for the Local Plan Review.

- 3.11 This section of the report now considers the four sites for which some detail has been provided in the updated position statement.

North West Cullompton

- 3.12 The Council rely on first delivery of homes in the 2020/21 monitoring year from the three applications submitted at NW Cullompton, including:
- Full planning application for 200 dwellings (17/01178/MFUL) submitted by Persimmon Homes at West of Willand Road;
 - Outline planning application for 200 dwellings (17/01346/MOUT) submitted by PM Asset Management at North of Tiverton Road; and
 - Outline planning application for 200 dwellings (17/01170/MOUT) submitted by Codex land PCC Land Promotion at North of Rull Lane.
- 3.13 This is considered unrealistic, and contrary to the NPPF definition of a 'deliverable' site, given primarily that none of the schemes are approved and are pending the signing of a Section 106, and do not even have a resolution to grant permission subject to the resolution of issues around the Section 106s. There are numerous planning stages to overcome before delivery, and there is an infrastructure burden required to be delivered prior to delivery of homes. This site cannot be relied upon to deliver homes in the immediate five year period.
- 3.14 All three planning applications went to Committee on 17 April 2019 and the S106 matters were discussed. It was resolved that the applications were deferred subject to amended recommendations relating to the S106 package including:

Amended recommendations:

- *Off-site highway works: improvements to J28 of the M5, pedestrian footway and crossing in Willand Road, traffic calming in Saxon Way, Plantagenet Drive and Norman Drive and footpath extension in Millennium Way to link to bus stops.*
- *That delegated authority be granted to the Head of Planning, Economy and Regeneration in consultation with the Chair and Vice Chair of Planning Committee and Ward Members to negotiate and enter into a fall-back position in the S106 agreements that seeks to prioritise and apportion S106 requirements in the event that one or more of the planning applications in question do not come forward for development.*

Additional recommendation:

- *That the S106 in respect of application 17/01178/MFUL also secure the provision of the community orchard, health garden and other public open space together with its long term management and maintenance.*

- 3.15 There has been no further update regarding the above issues progression of the S106 Agreements and progression of the Section 106 agreements, let alone when the applications will be taken back to planning committee for a resolution.
- 3.16 We do not agree with the Council's short lead in times for North West Cullompton outlined above. Our view is supported by the Council's own evidence in relation to the Tiverton EUE. Area B of the Tiverton EUE is not anticipated to yield first completions until 2026/27. When compared to this site, the proposed trajectory for the delivery of the 'remainder' at NW Cullompton is for dwellings to first be completed in 2024/25 despite the first three applications at NW Cullompton having permission and the fact that there are known issues with their immediate deliverability.
- 3.17 We suggest that it is more logical, and reasonable, that the remainder parts of NW Cullompton will come forward later than Area B at the Tiverton EUE i.e. after 2026/27.
- 3.18 In any case it is important to note that, as the only other comparable scale development in the District, the lead in time for strategic development at Tiverton has been substantial. A full application was submitted for the Cloverleaf road and junctions improvements in July 2014 and approved in October 2014. The first outline application for development was submitted concurrently in December 2013 and approved in September 2015. First completions are subsequently anticipated in the next monitoring year (2020/21), resulting in a 6 year lead in time to development - corroborating the evidence presented in previous sections of this report and, arguably, highlighting the overly ambitious lead in times anticipated by the Council in its latest trajectory.
- 3.19 The Cullompton applications were submitted in 2017, and applying the above lead in time would result in delivery at the earliest in 2023, later than anticipated by the Council. This is not taking into account the complexity of the proposals and known impediments to delivery such as substantial infrastructure works and viability issues.
- 3.20 The Council does not mention the further delay in their evidence to the Inspector and the trajectory has not made any adjustments since the January 2019 update. The deferral of the resolution to grant at the April committee meeting provides evidence that there has been further delay in the delivery of this development.
- 3.21 Even if the current planning applications are approved promptly, we also have concerns with the delivery rates predicted for the site. Both the full application and outline applications are anticipated to deliver concurrently, despite the need to progress reserved matters for the outline applications. As set out in section 2 of this report, we have considered the findings of Lichfield's report, which assessed national average delivery rates on large sites. The Council is therefore unlikely to exceed 122 dwellings per annum.
- 3.22 In section 2, we set out the definition of deliverability which is defined in the NPPF glossary. In our view, this site would fail the 2019 NPPF definition of deliverability due to the site not currently having planning permission. In addition to this, there is no clear evidence that housing completions will begin on site within five years.
- 3.23 Although planning applications have been submitted, they are still pending determination, and there is uncertainty as to when these will be granted. We consider

that insufficient evidence has been presented to give any certainty that it is reasonable to anticipate delivery on these sites within the five year period. It is clear that the lead in times assumed are ambitious and no detail has been made available to show that these sites have a realistic capability of contributing to housing supply on adoption of the plan.

East Cullompton

- 3.24 The Council's update in its response to the Inspector has pushed this site out of their 5 year supply and set completions for the first phase in 2023/24. The Inspector stated that the first 500 dwellings of this site must await the completion of the TCRR. Beyond that first 500 dwellings, the allocation to the east of Cullompton will require strategic intervention to facilitate further development, which may take the form of a new J28a on the M5.
- 3.25 There have been no planning applications or EIA Scoping or Screening submitted on the site to date. The assumptions that the Council have set are unrealistic given the sites planning status and the nature of how development will come forward on this site. We have concerns with the total annual average delivery rates relied on for a site of this scale having regard to the evidence, and consideration of market absorption. With the allocations of both NW Cullompton and East Cullompton, the Council's trajectory would assume that approximately 200 – 300 dwellings per annum will be delivered within Cullompton. We consider that the Council have set unrealistic delivery rates.
- 3.26 As set out in section 2 of this report, we have considered the findings of Lichfield's report, which assessed national average delivery rates on large sites. The Council has identified a delivery rate of 200 units per annum from the site. This is considered to be unrealistic, not least when compared to the Lichfields November 2016 Report which found that on average only 142 dwellings were delivered on sites of this scale. On the basis of 200 units per annum, the Council anticipates 1400 dwellings over a 7-year period, so when adjusted to a more realistic delivery rate this has serious implications for the overall delivery that can be reasonably anticipated from this site in the plan period. On that basis, the upper end of the Council's 200-300 range is entirely unrealistic.
- 3.27 In addition to this, in section 2, we set out the definition of deliverability which is defined in the NPPF glossary. In our view, this site would fail the 2019 NPPF definition of deliverability initially due to the site not currently having planning permission. Notwithstanding this there is no robust evidence to support the suggested trajectory.
- 3.28 The Council have had the opportunity to prepare additional information to support their assumptions regarding site delivery and, aside from conceding that the start date for completions on this site should be pushed back they have provided no justification to support the unrealistic levels of delivery per annum for this site, nor any evidence that more than the initial 500 units dependant on the TCRR can realistically be relied upon over the plan period.
- 3.29 Section 2 sets out the average lead in times, this is based on Lichfields 'Start to Finish', which considers that a realistic lead in time from the submission of an outline planning application to seeing dwelling completions on a site larger than 500 units should be a

minimum of 6 years. Even if an outline planning application was submitted on the site in the next couple of months, using these lead in times, we would suggest the first new homes will not be seen on this site until at least 2024/25.

- 3.30 The May 2019 Cabinet (referenced previously) sets out the housing trajectory for NW Cullompton, East Cullompton and Colebrook. The housing trajectory within this report states the following: *'note that only the first 500 homes at East Cullompton have been included as these will be unlocked by the relief road. The remainder of homes at East Cullompton will require a further, more substantial motorway junction upgrade'*. The Council subsequently removed the remainder of the East Cullompton allocation from the trajectory that it presented within the Cabinet report.
- 3.31 As there is currently no planning application submitted, the realistic lead in times for a site this large should be a minimum of 6 years. Given the lack of reasonable evidence our assessment is that it would be more reasonable to assume delivery for the site will start no earlier than 2027/28 and no more than 500 units should be relied upon over the plan period.

Land at Colebrook, Cullompton

- 3.32 The Council have included this site in its evidence and suggest that this site is not dependent upon additional highways infrastructure. The evidence from the Council does not mention the delay of the application for this site. An outline planning application for 105 dwellings was submitted by Taylor Wimpey in January 2019 (19/00118/MOUT) and recommended for approval by officers, however, the application was deferred at Committee in June 2019 for further discussions between Officers and the Agent to consider the possibility of a permanent vehicular access route from Colebrook Lane to the site.
- 3.33 Correspondence on the Councils website suggests that the application was to go to Committee on 31 July and an extension of time for work on the S106 to 31 August 2019. The planning application did not go to Committee on 31 July, causing further delay in the determination of the application and delivery of the development.
- 3.34 The Council have not applied unrealistic delivery rates to this particular site; however, the lead in time for this application is overly optimistic given the current status of the application as outline, with no planning permission. Delivery from this site in the next monitoring year is not considered a reasonable assumption.
- 3.35 In our view, this site would fail the 2019 NPPF definition of deliverability due to the site not currently having planning permission. No clear evidence has been presented to suggest that housing completions will begin on site within five years.
- 3.36 A planning application is pending for this site and, therefore, we are not necessarily suggesting that the site will not deliver over the plan period. However, we do question whether it is reasonable to assume any significant contribution to the five year housing land supply from this site on adoption of the plan. The Council have been asked to present evidence specifically to address concerns around five year supply and no such evidence has been made available regarding the immediate deliverability of this site which we consider needs to be pushed back by at least 2 years in the trajectory.

Higher Town, Sampford Peverell

- 3.37 An outline application was submitted by Place Land LLP in September 2017 for 60 dwellings (17/01359/MOUT). The Council's evidence omits any mention of the 'implications report' that was submitted when Members were minded to refuse the application on 3 grounds when it previously went to Committee in June 2018.
- 3.38 The application went to Committee again on 31 July 2019 with a recommendation for approval subject to a S106 agreement. However, the planning application was refused by Members at Committee on 31 July 2019 for the 3 grounds that were raised at the June 2018 Committee meeting, these are listed below:
- (i) The proposed outline application for 60 dwellings on this prominent site will have significant adverse visual impact on the surrounding landscape character and appearance.
 - (ii) The site is not considered to be a sustainable location for this scale of housing development due to poor pedestrian access. 60 dwellings would be a significant increase in the population of the village, which has little employment and which would result in an unsustainable pattern of car-based commuting.
 - (iii) The introduction of the substandard pedestrian footway at Sampford Peverell and the associated crossing points are considered to be unacceptable and unsafe. The introduction of 60 dwellings on this site will create a substantial increase in the numbers of cars which will need to access Sampford Peverell.
- 3.39 This recent refusal of planning permission is, therefore, clear evidence of considerable uncertainty around the delivery of this site. Delivery from this site cannot be relied upon at this time, and certainly it would not, in our view, be reasonable to suggest that this site can contribute towards the five year housing land supply for the authority area on adoption of the plan.

The 'Commitments' Source

- 3.40 The Council include an element of 'Commitments' for each settlement which are:
- Tiverton – 1,275 dwellings in the plan period;
 - Cullompton – 252 dwellings in the plan period;
 - Crediton – 295 dwellings in the plan period;
 - Rural Sites – 796 dwellings in the plan period.
- 3.41 This source equates to 2,618 dwellings total in the plan period or 28% of total plan period supply. Importantly, it also represents 71% of the deliverable supply in the current five year period. There is no breakdown of sites that comprise this source of

supply. There is, therefore, insufficient evidence to make a clear judgement on the soundness of this element of the Council's spatial strategy.

- 3.42 The following table sets out the Council's Commitments per year of the plan period which are from 2018/19 to 2027/28.

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2027/28	Overall Total
Tiverton	107	149	136	143	135	108	100	100	100	100	97	1275
Cullompton	91	71	53	25	12							252
Crediton	103	99	54	29	10							295
Rural	273	242	255	26								796
Overall Total	574	561	498	223	157	108	100	100	100	100	97	2,618

- 3.43 The Council provide a complete lack of justification or clear evidence for the inclusion of these dwellings in the five year, and plan period supply.
- 3.44 No confidence can be applied to the Council's assumptions in relation to 'commitments' owing to the complete lack of detail presented.
- 3.45 Given the importance of the 'commitment' element to the trajectory, particularly within the five year period, we have previously requested further information about the components of this portion of the council's supply. In our view, it is essential that the Council provides this information to support, or otherwise, their claims that this part of the supply meets the relevant tests.
- 3.46 Until the Inspector and participants are provided with evidence and justification for what makes up this source of supply, we consider it should be removed from the Council's supply.

4. Conclusions

- 4.1 In conclusion, there remain significant concerns with the Council's evidence and the justification provided for whether MDDC can demonstrate a five year supply of housing in the 1-5 year or 6-10 year periods.
- 4.2 The Council's Housing Supply Update has failed to address the concerns of the participants and Inspector and there remain still significant holes in the evidence base.
- 4.3 It has not be possible to make any detailed assessment of the Council's housing supply position, given the very limited level of detail provided for a significant proportion of the supply between 2018/19-2022/23. There is no breakdown of the 'commitments' element of supply despite this element of the trajectory accounting for over 70% of the deliverable housing in this part of the plan period.
- 4.4 The four sites that the Council have provided within their response to the Inspector fail the 2019 NPPF definition of deliverability due to none of the sites currently having planning permission and no clear evidence that they will begin on site within five years.
- 4.5 We request that the Council produce another update to the published housing land supply position, properly taking into account the comments of the participants (including comments made in this representation) and incorporating realistic delivery assumptions throughout the trajectory, as requested by the Inspector. These include for the avoidance of doubt:
- Reflecting a realistic lead in time for the allocations reliant on the Cullompton TCRR (particularly NW and E Cullompton);
 - Amending the average annual delivery rates at NW and E Cullompton to reflect a more realistic and achievable rate based on the evidence submitted on delivery rates and market absorption;
 - Setting out clear evidence on the deliverability on other sources of supply and sites in the Council's trajectory which is currently entirely absent (particularly major sites and the 'commitments' source);
 - Considering the implications of the revised NPPF definition of 'deliverable' and the housing land supply position following the adoption of the LPR.
- 4.6 We support the Spatial Strategy in principle, however it is of vital importance to properly consider the Council's true housing land supply position on the best available and more realistic delivery assumptions. As acknowledged by the Inspector in the post-hearings note (ID12) there are implications and fundamental amendments required to the draft LPR if the Council is found by the Inspector to be in deficit of the five year supply (our emphasis added):
- (i) *"Bringing forward other allocated sites that are currently restricted in terms of timing with no good reason, the Policy SP2 site for example; and/or*

- (ii) *Bringing forward the contingency sites; and/or*
- (iii) *Extending existing allocations to accommodate more dwellings **(the Policy WI1 site for example)** or increasing densities to allow for more dwellings on allocated sites that are less constrained; and/or*
- (iv) *Allocating a new, large site not constrained by the link road (or motorway junctions) that can come on stream quickly and bolster supply in the early years of the Plan while infrastructure is provided elsewhere.”*

- 4.7 Our client, as the promotor of Site WI1 which is specifically referenced as an example in point (iii), would clearly support that response as being appropriate and necessary to address the significant concerns on the Council’s supply. The allocated element of the site together with the further land our client controls is capable of accommodating up to 259 new homes. The wider site is suitable, available and deliverable and can make a valuable contribution to the Council’s housing land supply.
- 4.8 We are of the view that there is a considerable lack of evidence available to make a clear judgement as to whether the Council will be able to demonstrate a 5 year supply of housing, on adoption of the Local Plan Review. We also consider that, based on the unrealistic assumptions made with regard to lead in times and delivery rates, and the ambiguity over delivery of key infrastructure, there is uncertainty as to whether the sites identified are capable to delivering the quantum of housing required over the plan period.
- 4.9 Overall, we consider that the Council needs to review its housing land supply position as requested by the Inspector and incorporating realistic delivery assumptions throughout the trajectory including the robust evidence required where sites do not have full planning permission and are claimed to be delivering units within the five year period. Further allocation of land at Site WI1 would go some way to address these identified problems and the evident lack of deliverable housing land supply within Mid-Devon.

Appendix 1: Extracts of Decisions

Land at East Side of Green Road, Woolpit, Suffolk (Appeal reference: 3194926)

Appeal Decision

Inquiry held on 31 July, 1, 30 and 31 August 2018

Site visit made on 2 August 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018

Appeal Ref: APP/W3520/W/18/3194926

Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Landex Ltd against the decision of Mid Suffolk District Council.
 - The application Ref 2112/16, dated 2 May 2016, was refused by notice dated 6 September 2017.
 - The development proposed is the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access at Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF in accordance with the terms of the application, Ref 2112/16, dated 2 May 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Revised Transport Assessment, a Planning Statement, a Contamination Report Part 1 and Part 2, an Ecology Report and Skylark Survey, a Flood Risk Assessment, a Foul and Surface Water Drainage Strategy, an Archaeological Report and a Landscape and Visual Appraisal.
3. At the Inquiry, a S106 Unilateral Planning Obligation was submitted by the Appellant.¹ This addresses all of the matters sought by the District and County Council in connection with the provision of community and other services arising from the development. The Planning Obligation is signed and dated 29 August 2018 and is a material consideration in this case. A Community Infrastructure Compliance Statement has been submitted by Suffolk County Council (SCC).² I return to the Planning Obligation later in this decision.
4. In addition, the Appellant submitted an Agreement with Flagship Housing Group Limited, conditional upon planning permission being granted, to enter into a Deed of Easement³ to secure pedestrian and cycle access to the north

¹ APP8

² INQ5

³ APP7

less than substantial harm to Priory Cottage and this harm should be weighed against the public benefits of the proposals.

61. The public benefits of the appeal proposals comprise:

- An increase in the provision of housing numbers at a time of pressing need (see my conclusion on the following main issue)
- An increase in choice and type of homes
- 35% affordable housing provision
- Employment opportunities during the construction phase
- Residents would be likely to use the local shops and services within Woolpit making a positive contribution to their vitality and viability
- Provision of 0.5 ha of community open space with green infrastructure features – delivering high quality green spaces available to all
- Footpath improvements to the village centre and the wider countryside
- Highway works in the village centre would deliver benefits to the Listed Buildings and the Conservation Area.

62. In accordance with the test set out in paragraph 196 of the NPPF 2018, I find that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

Third Issue - Housing Land Supply (HLS)

63. It is common ground that the Council's strategic policy for housing numbers is more than five years old and has not been reviewed. Accordingly, paragraph 73 of the NPPF 2018 indicates that the Council's housing land supply is to be assessed against the standard method for calculating local housing need. The Council's local housing need is 585 dwellings per annum (dpa) and a 20% buffer is to be applied. This amounts to 3,510 dwellings for the next five years, or 702 dpa. The difference between the parties is solely down to supply.

64. No under supply/previous under delivery is taken into account when using the standard method. Therefore, no 'backlog' of unmet need should be taken into account when calculating the Council's housing land supply position.

65. The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of 'Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites.

66. The Council relies upon the same sites in its supply as were contained in its

Annual Monitoring Report (AMR) dated 11 July 2018. The only new site referred to at the Inquiry was that known as Land on the West of Barton Road, Thurston which was missed out of the AMR in error and for which planning permission was granted on 5 July 2018. The Council has carried out a sense check of the supply against the terms of the NPPF 2018 and referred to events that have occurred after the base date of the AMR.

67. In my view the definition of 'deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.¹¹ There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.
68. Sites with outline planning permission make up a very large proportion of the Council's claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years. I accept that there was clear evidence of what was necessary on one site provided in Mr Robert's evidence¹² and so the 200 dwellings in respect of that site should be added to the Appellant's supply calculations. As for the other 1,244 dwellings with outline permission, the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.
69. The up-dated PPG on Housing and economic land availability assessment sets out guidance on what constitutes 'deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. An assessment of the Council's AMR against the updated PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.¹³
70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018¹⁴ it does not alter

¹¹ Paragraph 1.1 of the Annual Monitoring Report

¹² Mr Robert's POE A4 Build out rates for Chilton Leys

¹³ See paragraphs 36 (ID:3-036-20180913); 047 (ID:3-047-20180913) and 048 (ID3-048-20180913)

¹⁴ LPA4

the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years.

71. Paragraph 73 of the NPPF 2018 requires the Council's housing supply to be made up of 'specific sites'. The Council was presented with three opportunities to demonstrate that the figure of 858 dwellings recorded in its trajectory table for small sites is robust. Firstly, on production of the AMR. Secondly, the Appellant asked for a list of sites on 30 July 2018 and was supplied with a list of 561 planning permissions, which the Council said made up its 858 dwellings. In this list there was insufficient evidence to either accept or challenge this figure, although a number of defects quickly became apparent to the Appellant. The Council was asked to provide more information but failed to do so. Finally, the Council indicated that it was going to submit a final rebuttal proof of evidence on HLS but it did not do so.
72. The Council argues that the St Modwen case¹⁵ continues to provide sensible guidance on the context, as applied to NPPF 2018 and claims that it can demonstrate a 5 year HLS of 5.39 years. However, I cannot accept that the 858 is a robust figure. I agree that it would be a time consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR. The Appellant has completed a partial review and from the evidence that is before me it appears that there are at least 108 defective planning permissions within the list of 561 permissions¹⁶ but does not know by what number one should discount the figure of 858. As the NPPF 2018 carries a presumption that small sites are deliverable until there is clear evidence that they will not be delivered, the 858 has been left in the Appellant's HLS calculation but I consider it is likely to be an overestimate.
73. Drawing all of these threads together I consider that the Appellant's assessment of supply, set out in Mr Short's rebuttal proof of evidence, is the more realistic taking into account the St Modwen judgment. The only change is that the site West of Barton Road, Thurston should now be removed from the supply. This leaves the Council's HLS at 3.4 years. If the small sites problem is taken into account, it is highly likely that the Council's HLS is less than 3.4 years. I conclude on the third issue, therefore that the Council cannot demonstrate a five year supply of deliverable housing sites.

Other Matters

74. I have taken into account all other matters raised including the representations from the Woolpit Parish Council, the Suffolk Preservation Society, the landscape assessment of Woolpit by Alison Farmer Associates and other interested persons. I have also taken into account the various appeal decisions submitted by the main parties. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the local highway network or the heritage impact which I have dealt with under the main issues.

¹⁵ St Modwen Developments Ltd v SSCLG et al [2017] EWCA Civ 1643 paragraph 35

¹⁶ APP6

**Entech House, London Road, Woolmer Green
(Appeal reference: 3190821)**



Appeal Decision

Inquiry Held on 18 September 2018

Site visit made on 24 September 2018

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2018

Appeal Ref: APP/C1950/W/17/3190821

Entech House, London Road, Woolmer Green SG3 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Taylor Wimpey North Thames against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2017/0848/MAJ, dated 21 April 2017, was refused by notice dated 14 September 2017.
 - The development proposed is the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure.
-

Preliminary Matters

1. Following receipt of closing statements, an agreed list of planning conditions and a S106 Unilateral Undertaking (UU), the inquiry was closed in writing on 2 October 2018. The UU contains obligations regarding: affordable housing, fire hydrants; play facilities; a Framework Travel Plan and financial contributions relating to bins, ecology, education, community facilities and monitoring.
2. The decision notice contains 4 reasons for refusal (RfR). Following the receipt of further information and the UU, RfRs 3 and 4 relating to flood risk and infrastructure were not pursued by the lpa.

Decision

3. The appeal is allowed and planning permission is granted for the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure at Entech House, London Road, Woolmer Green SG3 6JE in accordance with the terms of the application, Ref. 6/2017/0848/MAJ, dated 21 April 2017, subject to the conditions set out in the Schedule to this decision.

Background to Main Issues

4. The local planning authority (lpa) accepts that the proposal does not conflict with the development plan¹ when read as a whole. The outstanding RfRs assert conflict with the emerging Welwyn Hatfield Borough Local Plan (eLP) submitted for examination in May 2017. The lpa acknowledges that whilst the 2018 Framework² indicates that policies contained in the 2012 Framework will apply for the purposes of examining plans submitted on or before 24 January

¹ Welwyn Hatfield District Plan 2005.

² Annex 1: Implementation.

Issue 3 – Housing Land Supply (HLS)

22. The development plan is older than 5 years and the default position for calculating the 5-year HLS is against local housing need using the standard method (Framework paragraph 73). The lpa bases its HLS on the eLP target of 12,000 dwellings referring to Framework paragraphs 60 and 214. Paragraph 60 says that in determining the minimum number of homes needed, strategic policies should be informed by a local need assessment using the standard method unless exceptional circumstances justify an alternative approach. The lpa submits that in light of: the local plan transitional arrangements; the uplift in dwelling numbers has yet to be determined; the potential for an early adjustment to the standard method and the advanced nature of the eLP, it has a "*justified alternative approach*".
23. The lpa's concern that using the 2012 Framework to examine a local plan and the Framework to decide applications/appeals, could place it in a position where, based solely on the method for calculating need, very different results could obtain the week before and the week after adoption of a local plan is, in my view, misplaced. Such a position will not have escaped the authors of the Framework when the transitional arrangements were put in place. If it were a justified concern similar transitional arrangements would have been put in place for determining planning applications/appeals. They have not and, in any event, the conflict the lpa suggests would be addressed by applying Framework paragraph 48.
24. As to the uplift in housing numbers, the identification that the existing housing target is unsound is a clear indication that the existing approach is flawed. Whilst the Government has indicated that it will consider revisions to the standard method, there is no indication when those revisions, if any, will be introduced. Thus, until changes are made, the current system applies. Here the eLP is not at an advanced stage; indeed it is nowhere near the stage in the lpa's example.
25. Framework paragraph 60 applies to the production of strategic policies and not the determination of individual proposals. Moreover, even if it can be argued that it should apply in determining applications/appeals the use of an alternative approach is only justified in "*...exceptional circumstances...*" Here, adopting a base figure identified as unsound is no justification to set aside the Framework requirement to assess local need using the standard method and nowhere near the high bar of exceptional circumstances.
26. I consider that the standard method for assessing local need based on the September 2018 Household projections with the addition of an appropriate buffer should be used for identifying the housing requirement. The Housing Delivery Test is not yet in play and based on the evidence before me, it is appropriate to apply a 5% buffer.
27. Adopting the above position, the lpa calculates the HLS position as some 5.71-years and the appellant at some 1.74-years. The significant discrepancy turns on a fundamental difference between the lpa and the appellant as to which sites should be included within the 5-year supply. In particular the dispute relates to allocated sites within the eLP particularly Green Belt releases and those with outline planning permission.

28. In setting the context for the supply side of the equation, the lpa refers to the 2012 Framework and Footnote 11. This said that to be considered deliverable sites should: be available now; be a suitable location for development now; be achievable with a reasonable prospect that housing will be delivered within 5 years and that the development of the site is viable. In that context, disputes over the 5-year HLS generally revolved around the distinction between what is deliverable and what will be delivered. This distinction was settled by the Court of Appeal with the St Modwen Developments judgement⁹ which, amongst other things, said, "*The assessment of housing land supply does not require certainty that housing sites will actually be developed within that period. The planning process cannot deal in such certainties.*" Thus, for a site to be deliverable it should be capable of being delivered not that it will be delivered. To conclude that a site was not deliverable it was the objector who had to provide clear evidence that there was a no realistic prospect that the site would come forward within 5 years.
29. The lpa submits that, as the Framework retains, largely intact, the definition of deliverable set out in Footnote 11 to the 2012 Framework as the essential test, the decision of the Court of Appeal remains the authoritative definition of deliverable. The appellant submits that the requirement now as set out by the Framework is that the emphasis is now on delivery and that it is for the lpa to provide clear evidence that completions will begin on site in 5 years.
30. Annex 2 of the Framework and updated PPG provides specific guidance on which sites should be included within the 5-year supply. This guidance goes significantly further than the 2012 Framework. Whilst the Framework definition largely repeats the wording of Footnote 11, this now appears to be an overarching reference to be read in the context of the paragraph as a whole. The paragraph goes on to identify 2, closed lists of sites that constitute the 5-year supply. The second closed list refers to sites: with outline planning permission; with permission in principle; allocated in the development plan or identified on a brownfield register. Whilst such sites can be included within the 5-year HLS, there is no presumption of deliverability and it is for the lpa to justify their inclusion with clear evidence that housing completions will begin on-site within 5 years. The PPG provides a non-exhaustive list of examples of the type of evidence that can be used to justify the inclusion of such sites within the 5-year supply.
31. The bulk of the lpa's 5-year supply consists of: (1) sites with outline permission (871 units); (2) sites allocated in the eLP (269 units); (3) sites in the Green Belt allocated in the eLP (1,671 units) and (4) sites awaiting planning permission (440). The addition the Category 4 sites is only part of the equation and for a land supply position to be considered robust it should include losses through demolitions and lapsed permissions. I am not clear that a full exercise has been carried out and I consider this figure should be treated with caution. Thus, for the purposes of determining whether the lpa can demonstrate a 5-year HLS, I have concentrated on Categories 1, 2 and 3 as cumulatively they constitute the bulk of the asserted HLS (2,811 units).
32. The Category 1 sites, feature in the second of the closed lists and are capable of being included in the HLS, subject to being supported by clear evidence from the lpa. The lpa had the opportunity in its evidence and during a round

⁹ St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (20 East Riding of Yorkshire Council and Save our Ferriby Action Group [2016] EWHC 968 (Admin)).

table session on the disputed sites to provide the clear evidence required to justify their inclusion in the HLS. Indeed following the presentation of the lpa's evidence and the round table session, I permitted the lpa to provide a note seeking to explain delivery during the 5-years on one site, Broadwater Road West. Moreover, I had the opportunity to examine the lpa's data sheets for the disputed sites on which it drew its evidence. Taken together, whether the approach to these sites adopts the lpa's "capable of being delivered test" or the appellant's "will be delivered" test, I consider the information from these sources falls well short of the clear evidence required by the Framework to justify inclusion of these sites within the HLS.

33. Sites within emerging local plans (Category 2 and 3 sites) are specifically excluded from the second of the closed lists. This is on the basis that it is for the local plan examination to assess these allocations in the round. In that forum, unlike a S78 inquiry, the EI has contributions from all of the relevant stakeholders. This is particularly so for Green Belt releases given the scale of the releases envisaged and the importance that the Framework attaches to the ongoing protection of the Green Belt. Given the Framework as it now stands, I consider that as a matter of principle the Category 2 and 3 sites do not fall within the definition of available and offer a suitable location for development now. Moreover, given that this eLP is not at an advanced stage and the significance of the work the lpa is required to undertake to attempt to meet its objectively assessed need it cannot be said, that there would be a realistic prospect that housing will be delivered on these sites within 5-years.
34. I conclude that the lpa cannot show a 5-year supply of deliverable housing sites and that the scale of its supply falls considerably well short of 5 years.

S106 Unilateral Undertaking

35. In response to requests from the lpa and the County Council (CC), the UU contains obligations to cover: the provision and retention of Affordable Housing; the provision, laying-out and arrangements for the management of the play space; the provision of fire hydrants and the submission of a Framework Travel Plan. The UU also provides for financial contributions of £7,004 for refuse and recycling bins; £9,500 for ecology works; £186,240 for secondary education provision; £12,672 for library provision and £35,528 for youth services.
36. These obligations are derived from a Planning Obligations Supplementary Planning Document February 2012 produced by the lpa, the CC's Planning Obligations Guidance – Toolkit for Hertfordshire 2008 and Hertfordshire's Travel Plan Guidance for Business and Residential Development. The lpa and the CC confirmed that none of the obligations would conflict with the provisions of CIL Regulation 123 regarding pooled contributions for infrastructure. The above obligations comply with Framework and CIL Regulations and I have taken them into account in coming to my decision.
37. The UU includes obligations to pay a monitoring fee of £5,000 to the lpa and to pay a Travel Plan Evaluation and Support Contribution of £6,000 to the CC. There is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggests that an authority could or should claim monitoring fees as part of a planning obligation. Monitoring and administration are one of the

**Longdene House, Hedgehog Lane, Haslemere
(Appeal reference: 3165974)**



Appeal Decision

Inquiry Held on 9-12 October and 19 November 2018

Site visit made on 19 November 2018

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 10th January 2019

Appeal Ref: APP/R3650/W/16/3165974

Longdene House, Hedgehog Lane, Haslemere GU27 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
 - The appeal is made by Monkhill Ltd against the decision of Waverley Borough Council.
 - The application Ref. WA/2016/1226, dated 6 May 2016, was refused by notice dated 20 September 2016.
 - The application is for "...redevelopment to provide up to 29 dwellings (net increase of 27 dwellings); demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; landscaping and highway works including alterations and extension to the existing access to Hedgehog Lane. Within this hybrid planning application: Outline planning permission (with Layout, Scale and Appearance reserved and Access and Landscaping for approval) is sought for the erection of up to 28 new dwellings (Class C3), including extension and alterations to existing access from Hedgehog Lane, demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; and associated landscaping; and Full planning permission is sought for the change of use and refurbishment of Longdene House from office (Class B1a) to residential (Class C3) to provide a new dwelling."
 - This decision supersedes that issued on 4 September 2017. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. All the appeal documentation from the quashed decision was submitted as part of the documentation for my Inquiry. I have taken into account the submissions and judgments about the relevance of the previous Inspector's decision. The appellant's view is that it should be the starting point for the assessment of any supplementary evidence. However, there is case law that the quashed decision should be treated as if it has not been made and is incapable of ever having had any legal effect. I have, therefore, considered the matter afresh and determined the appeal on its merits, having regard to the evidence submitted to my Inquiry. Nevertheless, where the unchallenged reasoned conclusions of the previous Inspector's decision are capable of being material considerations, by reason of the way the witnesses at my Inquiry were questioned about these matters, or otherwise, and I have come to a different view from the previous Inspector on those points, I have set out my reasoning for doing so.

36. It seems to me that the many constraints on the local network, which were apparent at my accompanied and unaccompanied site visits, serve to keep vehicle speeds low, and encourage drivers to adopt a cautious approach. I see no reason why this should be any different with residential development of the appeal site. Taking into account all the evidence adduced at the Inquiry, and from my site visits, I do not consider that the proposal would be likely to result in an unacceptable adverse effect on highway safety. Available routes to the town centre and railway station are not so dangerous that they would render the location unsuitable for further residential development.
37. Local apprehension about risks to vulnerable road users is understandable, but I do not consider that any resultant harm to highway safety should weigh significantly against the proposal. I find no conflict with LPP1 Policy ST1. Residual cumulative impacts on the road network would not be severe, and any increased risk to highway safety would fall far short of an unacceptable impact that would, in accordance with the *Framework*, justify preventing the development on highway grounds.

Housing supply

38. WBC updated its 5 year supply using a 1 April 2018 base date to demonstrate a 5.8 years' supply, with a 5% buffer as was applied by the Local Plan Inspector. The appellant disputes this and considers that with a 5% buffer there is only 3.37 years' supply.⁹ I note that Inspectors in other appeals have recently found a 5 years' supply, largely on the basis of maintaining the Local Plan Inspector's conclusions. However, the provisions of the revised *Framework* make it more difficult to place such reliance on the Local Plan Inspector's finding that WBC could demonstrate a 5 year supply of deliverable housing sites.
39. I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.
40. Urban and Rural LAA sites could potentially contribute to supply provided that there was clear evidence that completions will begin on site within 5 years. However, I consider that WBC's submissions about the deliverability of these sites falls short of the clear evidence now required. Many of the Rural LAA sites are located in the Countryside beyond the Green Belt, or in the Green Belt, the AGLV or the AONB. There is no clear evidence about the deliverability of these sites, particularly where progress on eLLP2 has been deferred.
41. Footnote 39 of the *Framework* provides that from November 2018 significant under delivery would be measured against the Housing Delivery Test (HDT).

⁹ ID15 Table 2 indicates that this is based on deleting from WBC's total supply of 5,287 units the following: 1,159 units from outline permissions, 487 units from Urban LAA sites and 574 units from Rural LAA sites.

However, the HDT assessments have not yet been published, and paragraph 215 of the *Framework* states that the test will apply from the day following the publication of its results. I do not consider that it would be appropriate in advance of the publication of the HDT assessment to require a 20% buffer. ID15 Table 3 indicates that, with a 5% buffer, if the outline consents alone were deleted there would be 4.5 years' supply, and if the outline consents were included but both Urban and Rural LAA sites deleted there would be 4.6 years' supply. On the evidence before me, I find that the housing land supply here would be between 3.37 years and 4.6 years. There is not enough information about individual sites for me to assess where within this range the current supply falls. Nevertheless, this is a significant shortfall.

42. The additional dwellings from the proposed development would make a significant contribution to the supply of housing in Haslemere. The provision of 10 affordable dwellings would be particularly important in providing for local needs and would comply with LPP1 Policy AHN1. Given the housing land supply situation and the degree of shortfall, these are benefits which should be given significant weight in the planning balance.

Other matters

43. The appeal site lies within 5 km of the Wealden Heaths Special Protection Area (SPA). The scheme does not propose any mitigation for any adverse impact on the SPA. Natural England (NE) considers, given the size and scale of the proposal that it would not lead to a likely significant effect upon the integrity of the SPA, either alone or in combination. Accordingly, NE does not consider it necessary for an Appropriate Assessment (AA) to be undertaken. I note that an AA was completed by WBC in determining a duplicate application for the appeal site (Application Ref.WA/2018/0151), and that NE was happy with the outcome of that assessment.¹⁰ However, I am satisfied on the evidence before this Inquiry that the proposal, alone or in combination, is not likely to have a significant effect on the interest features of the SPA.¹¹ It is not, therefore, necessary to undertake an AA. WBC now concurs with this finding.
44. The proposal would provide employment during construction and future residents would contribute to the local economy. The proposed landscaping and ecological enhancements would be beneficial for wildlife, and so the scheme would gain some support from LPP1 Policy NE1. These are benefits which should be given moderate weight in the planning balance.
45. I have taken into account all the other matters raised in the evidence, including the appellant's submission that some development of AONB land will inevitably be required to meet LPP1 requirements for housing in Haslemere. But this is a matter for eLPP2, and I do not consider that it should be a decisive consideration in determining this appeal. The fact that work on eLPP2 has been deferred does not, in my view, alter this finding. Similarly, it is not very helpful in deciding the appeal on its planning merits to draw comparisons with other possible housing sites in the wider locality. It is not possible in this section 78 appeal to consider all the relevant matters, along with the views of interested parties, on the different sites likely to be required to meet the housing requirement in Haslemere. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

¹⁰ This duplicate application was refused in August 2018 against officer recommendation for approval.

¹¹ ID16.

**Land off Colchester Road, Bures Hamlet, Essex
(Appeal reference: 3207509)**



Appeal Decision

Inquiry Held on 12-15 and 19-20 February 2019

Site visit made on 21 February 2019

by Robert Mellor BSc (Est Man) DipTRP DipDesBEnv DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2019

Appeal Ref: APP/Z1510/W/18/3207509

Land off Colchester Road, Bures Hamlet, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Braintree District Council.
 - The application Ref 17/02291/OUT, dated 21 December 2017, was refused by notice dated 26 June 2018.
 - The development proposed is for the erection of up to 98 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Colchester Road.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline and all matters are reserved for subsequent determination apart from the principle of the development and the means of access.

Main Issues

3. Having regard to the provisions of the development plan and to other material considerations, including national policy, I consider the main issues to be:
 - What effect the development would have on the landscape character and appearance of the area.
 - What effect it would have on the significance of heritage assets.
 - Whether adequate provision would be secured for affordable housing and for necessary infrastructure to support the development.
 - What effect the development would have on biodiversity including whether any likely significant effect on the Blackwater Special Protection Area/RAMSAR site would require that an Appropriate Assessment be made of such impacts before determining the appeal.
 - Whether there is a 5-year supply of housing land in Braintree District.

Housing Land Supply

52. Although not a provision of the development plan, national policy at paragraph 73 of the Framework (2019) provides that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need where the adopted strategic policies are more than 5 years old [as here].
53. At the date when the application was determined in June 2018, the Council accepted that it was unable to demonstrate that it had the minimum 5-year supply of housing land required by the Framework (2012). Shortly afterwards in July 2018 the Government published the updated Framework (2018) which, amongst other changes, modified how the housing requirement should be calculated. Changes to the supporting Planning Practice Guidance were then published in September 2018 in respect both of the housing requirement calculation and the evidence sought to demonstrate the available supply.
54. In January 2019 the Council published an Annual Monitoring Report with a base date of 31 March 2018 and which claimed that the Council could demonstrate a housing land supply in excess of 5 years. This was based on a local housing need requirement using the recommended standard method and derived from the latest 2016 household projections.
55. Following a Technical Consultation the Government has made further relevant changes to the Framework and to the PPG. These were published during the Inquiry in February 2019. Amongst other things these changes provide that the 2014 household projections should be used when calculating the standard method and that alternative approaches to calculating housing need should only be considered at the policy-making stage and not in decision-making.
56. When calculated in line with the latest policy and guidance (and the results of the Housing Delivery Test - also published in February 2019), the Council continues to maintain that it has a supply in excess of 5 years. The Framework provides that there should be an annual assessment of supply. The PPG at paragraph 3-038 also allows that for applications and appeals it is only necessary to demonstrate supply once a year. The Council does not yet have up-to-date strategic policies on which an Annual Position Statement would be based. It therefore relies instead on the Annual Monitoring Report (AMR) published in January 2019.
57. The Appellant challenges the Council's supply figures as set out in the AMR. The main area of disagreement concerns the treatment of outline planning permissions for major development in the calculation of supply. Also at issue is whether sites subject only to a resolution to grant planning permission at the base date should be included (as for example where the grant of planning permission depends upon the completion of a Section 106 planning obligation).
58. Based on the 2014 household projections, and with an agreed 5% buffer, both main parties now agree that the local housing need at 31 March 2018 over 5 years is for 4,457 dwellings. The Council estimates the supply at 4,834 dwellings (5.42 Years) to include 2,247 dwellings on sites with outline permission at the base date, 200 at 'growth locations' and 267 at 'other sites'.
59. The Appellant has offered 2 alternative calculations. What is described as a 'strict' interpretation would result in a supply of 2,977 dwellings (3.34 years).

This excludes the above supply at the growth locations and other sites and reduces the supply on sites with outline permission to 857 dwellings, mainly due to a claimed lack of clear evidence that these would have been deliverable at the base date of 31 March 2018. In the alternative the Appellant has also calculated supply based on what is described as a '*benevolent*' approach which would result in a supply figure of 3,968 dwellings (4.45 years). In that case the supply from sites with outline permission at the base date would be 1,613 dwellings.

60. My attention has been drawn to how these matters have been addressed in other appeal decisions, albeit that they pre-dated the latest Government policy and guidance. In particular, in the Woolmer decision¹ the Inspector opined that the definition of 'deliverable' in the Glossary of the Framework 2018 is a closed list. If so, whilst the definition is set out in the first sentence, a closed list would mean that only the types of housing sites listed in the second and third sentences of the definition could qualify as deliverable. The Framework 2019 has slightly modified and restructured the definition but the changes do not provide additional confirmation that the list is closed.
61. The Council has drawn attention to the Salford decision² by the Secretary of State where sites with a resolution to grant permission subject to a Section 106 agreement had been included in the housing supply and the Secretary of State had made no criticism of that approach. However, as the supply in that case was agreed to be far in excess of 5 years it made no difference to the principal issues and it does not appear that the Secretary of State gave active consideration to that matter. I therefore accord it little weight.
62. In the Woolpit decision³ the Inspector concluded that all permissions issued after the base date should be excluded on the basis that its consideration would also require a review and extension of the period over which housing need is to be assessed. I disagree on that latter point. It is not necessary to adjust the housing need period if the assessment of supply only concerns that which is expected to be delivered within the original 5-year period. However, I agree that new planning permissions after the base date should be excluded and that would include permissions subject to a resolution to grant subject to a Section 106 obligation. Uncertainty about when such an obligation would be completed could put back a potential start date by months or even years. Information about significant new supply from such sources after the base date but before the annual assessment might nevertheless be material when considering the weight to be accorded to an identified shortfall in supply.
63. In respect of information received after the base date about the progress of sites with outline permission at the base date, I consider that this information should be included in the AMR in order to provide the necessary '*clear evidence*' of whether and when housing will be delivered. An example could be that a site with outline planning permission at the base date had subsequently been the subject of an application for full permission for a similar development in preference to a reserved matters application. That can occur when some amendment to the scheme had meant that whilst housing delivery was still expected a reserved matters application was not appropriate. That an

¹ Appeal Ref APP/C1950/W/17/3190821

² Document ID20

³ Appeal Ref APP/W3520/W/18/3194926

essentially similar development was now being advanced by a different route should not to my mind preclude the site from inclusion in the base date supply.

64. The March 2018 base date of the Council's AMR preceded its publication by more than 9 months. However, a base date close to the beginning/end of the financial year is widely accepted as a suitable annual monitoring period. It is entirely reasonable that the base date is not updated to a new date for each application or appeal, as confirmed by the PPG. Reasons for the delay in preparing and publishing the report here include that the Framework was significantly modified 4 months after the monitoring period in July 2018 to include a new standard method to assess the housing requirement and a revised definition of deliverable sites for inclusion in the supply. Also, the PPG guidance about how to assess need and supply was only issued 6 months after the monitoring period in September 2018. It can be expected that subsequent reports using current guidance would be compiled and issued closer to the annual base date.
65. The Framework definition of deliverable sites provides that in some cases (including outline permissions for major sites and also for development plan allocations where there is as yet no planning permission) there should be clear evidence that housing completions will begin on site within five years. To establish the site's contribution to the housing supply there would also logically need to be an assessment of the amount of housing expected to be delivered within that five-year period.
66. Where there is to be reliance on an annual assessment then that clear evidence should logically be included in that published assessment or at least published alongside it. That would qualify as publicly available in an accessible format as the PPG requires. It would accord with guidance in PPG Paragraph 3-048 which applies to all forms of annual review including, but not limited to, annual position statements. That is not to say that there should be publication of every email or every note of a meeting or telephone conversation. The information can be provided in summary form but there needs to be some means of identifying the basis for the conclusion reached.
67. The information published here in the AMR is minimal and it relies heavily on unsupported assertions that a site will be delivered. That does not amount to clear evidence. In most cases it does not include the additional information that was introduced only in oral evidence at the inquiry such as: the date when a reserved matters submission was made or anticipated; when a S106 obligation was completed; why a full planning application and not a reserved matters application was submitted on a site that already had outline permission; the source of an estimate of a delivery rate; any assumptions and yardsticks that were applied where direct information was in doubt or missing; or other information of the type suggested in PPG paragraph 3-036. Information of that type could be readily summarised and published, possibly in a tabular form.
68. Overall, and having heard the Council's oral evidence about progress on sites which is said to have informed its conclusions in the AMR, I consider that the Appellant's 'strict' approach unreasonably excludes many sites where it is very probable that there will be significant delivery of housing within the 5-year period. On the other hand, the Council has over-estimated the rate at which some sites may be developed and progress on some sites remains unclear even

when taking into account the Council's additional oral evidence of what has occurred since March 2018. Sites that were subject only to a resolution to grant permission at the base date should be excluded.

69. I consequently do not consider that the Council has demonstrated in the AMR with clear evidence that it has a 5-year housing supply. Whilst there is insufficient evidence to make a precise assessment, the likelihood is that the supply is closer to the Appellant's 'benevolent' approach which concludes that there is a 4.45-year supply. That represents a shortfall, albeit not a severe one. The weight to be attached to the shortfall may also be reduced in that there is some evidence of factors which will increase supply such as the issuing of permissions for developments that were only subject to resolutions to permit at the AMR base date. There is also at least one permission issued on a major site after the base date where development has already commenced on site. It is also material that the eLP examination is advancing and that the adopted plan can be expected both to redefine the housing requirement and to make provision to address it.

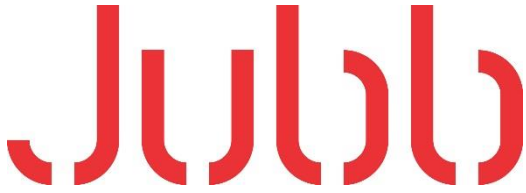
Other Matters

70. I have taken into account all other matters raised in representations. In particular I consider that the location and dimensions of the access junction would be adequately safe. Although not clearly specified in the Section 106 agreement, the advance provision of dropped kerbs at junctions and raised kerbs at the bus stop could be the subject of a condition to facilitate disabled access.
71. For a small rural village, the accessibility by public transport is unusually good and there is a range of services and facilities within walking or cycling distance. The limited parking at the station would be likely to encourage rail users to walk or cycle to the station.
72. However, neither these nor the other matters raised outweigh my conclusions on the main issues.

The Planning Balance and Conclusions

73. I conclude above that the proposal would contravene adopted development policies for the control of development in the countryside outside development boundaries. There would also be conflict with policies to protect the character and appearance of the area and specifically with CS Policy CS8 in respect of the landscape and visual effects. That conflict here outweighs compliance with some other development plan policies such that there would therefore be overall conflict with the development plan.
74. However, the apparent lack of a deliverable 5-year housing supply means that at least some of the other most important development plan policies for determining the application are out of date inasmuch as they would not provide for a sufficient supply. In particular the CS Policy CS5 and RLP Policy RLP2 development boundary is out of date as there is a lack of evidence that sufficient housing to meet the identified local housing need could be provided within the adopted boundaries. Limited weight can yet be accorded to the emerging Local Plan and its development boundaries which are not yet part of the development plan which may change prior to adoption. That and the supply shortfall necessarily triggers the application of paragraph 11 of the

Appendix 2: Jubb Note



Title: Cullompton Highway Infrastructure Representation
for Local Plan Review Examination

Date: January 2019

1.0 Introduction

- 1.1.1 Jubb have been commissioned by Gallagher Estates Ltd to provide further transport and highways advice in relation to the Local Plan Review Examination, based predominately on their interest in a proposed housing allocation (known as "Land east of M5") to the south of the existing urban area of Willand. As part of this commission Jubb have been requested to provide transport and highways representation for consideration at the Local Plan Review Examination.
- 1.1.2 This note provides further consideration in relation to the proposals for housing delivery within the Cullompton area. In particular, this note considers the identified housing allocations at North West Cullompton and East Cullompton (also known as Culm Garden village).
- 1.1.3 The note provides further detail in relation to the infrastructure required to deliver those proposals as set out in the "Local Plan Review 2013 – 2033 Proposed Submission" document published in January 2017. The note provides evidence to demonstrate that the timescales for provision of infrastructure required to deliver this housing are still yet to be finalised and that there are still a significant number of technical and practical barriers to resolve before further clarity can be provided on this. This therefore presents significant risk in terms of the housing trajectory of the Local Plan.
- 1.1.4 The structure of this note is therefore as follows:
- Section 2 – Provides detail of the allocations within Cullompton as set out in the Local Plan Review
 - Section 3 – Outlines potential highway improvements that have been identified by MDDC to enable some of this housing to come forward initially prior to the introduction of major strategic improvements which are also discussed
 - Section 4 – Details potential technical issues that may affect the delivery timescales of the highway improvements, which include the requirement for further technical studies and land acquisition
 - Section 5 – Provides details of the costs of these highway improvements and the identified sources of funding
- 1.1.5 In addition, Section 6 of this briefing note provides a summary and appropriate conclusion.

2.0 Cullompton Allocated Sites

- 2.1.1 The key allocations within Cullompton as set out in the Local Plan Review are the North West Cullompton site (Policy CU1-CU6) and the East Cullompton site (Policy CU7-CU12). The locations of these allocations are set out in the Cullompton Local Plan policy map (Examination Reference SD02).
- 2.1.2 It is proposed within the Local Plan Review document that these sites would provide the majority of housing at Cullompton during the plan period (i.e. 1,350 at North West Cullompton and 1,750 dwellings at East Cullompton), with only limited housing allocation proposed elsewhere within the Local Plan at Knowle Lane (30 dwellings) and Ware Park & Footlands (38 dwellings).
- 2.1.3 It is noted that for both the North West Cullompton and East Cullompton sites the Local Plan identifies the requirement to mitigate traffic impacts at M5 Junction 28 to minimise any potential subsequent knock on impact (i.e. as a result of queuing traffic from this junction) on the town centre itself. This is emphasised in paragraph 3.94 that states:

"...Devon County Council queue length monitoring at junction 28 of the M5 motorway indicates congestion at the AM peak. The development will need to mitigate its impact upon the junction's capacity through implementation of an improvement scheme, either to the existing junction or in the form of more extensive junction improvement works involving a second overbridge required in connection with development east of Cullompton under policy CU7."

- 2.1.4 Potential highway schemes to mitigate congestion at Junction 28 are in the process of being developed by MDDC. These highway schemes are discussed in more detail below.
- 2.1.5 It should be noted that these schemes are still in the early stages of development and therefore there is a lack the certainty in terms of design, funding and timescales. This is a key risk given the number of dwellings that are reliant on the implementation of this infrastructure that make up a large proportion of the homes that are proposed to be delivered within the plan period.

3.0 Identified Highway Improvements

- 3.1.1 MDDC's long term aspiration is to introduce an additional M5 motorway junction (i.e. Junction 28A) to the south of the existing Junction 28. It is also proposed that this motorway junction would include a link from the B3181 to the west of the Junction 28 that would link with the new junction and Duke Street to the south. The proposal would therefore not only offer an additional access to the motorway, which would reduce the impact on approach to Junction 28, but would also provide an alternative route that would bypass the town and link with areas to the south of Cullompton and east of the M5. A proposed initial general arrangement proposal has been developed by WSP / Parsons Brinkerhoff on behalf of MDDC (Examination Document Reference SSE18).
- 3.1.2 Notwithstanding the above, it is evident, if this scheme were to be implemented, that there would be significant further design, technical study and consultation required before it even meets the stage of a formal application. Furthermore, more importantly, this proposal would require significant capital investment to introduce, with initial estimates within MDDC's Draft Infrastructure Plan (dated December 2016) placing these costs at £50-£55 million. At this stage, it is understood that suitable sources of funding are not yet available for this scheme to cover these costs.

- 3.1.3 Thus, in consideration of the aforementioned constraints, an interim scheme has been developed by MDDC with the aspiration to allow some housing to come forward in the medium term. This interim solution proposes a road connection that would enable a bypass route to be obtained for the town from the north (i.e. in the vicinity M5 Junction 28) to the south at Duke Street. This proposal is referred to as the "Link Road" for the remainder of this note.
- 3.1.4 It is understood that various options have been considered for the alignment of the Link Road which included solutions to the east and west of the motorway. These options were briefly evaluated in a "Route Options Report" which was produced by WSP on behalf of MDDC and Devon County Council (DCC) and published in August 2018. Three key options were then taken forward for further consideration which encompassed two potential routes linking the B3181 with Duke Street on the western side of the M5 (i.e. Option A and B), and proposals for a link that crosses the M5 via an additional overbridge (Option C).
- 3.1.5 A subsequent traffic model was produced to assess the implications in terms of associated improvements to traffic capacity on the local Cullompton network, with the results summarised in a subsequent "Traffic Modelling Report" published in September 2018. This "Traffic Modelling Report" concluded that the potential Link Road options could provide capacity to enable the whole of the North West Cullompton allocation to come forward. In addition, the model also forecasts that the Link Road could enable a first phase of development to come forward at East Cullompton (i.e. 500 dwellings) in addition to this. After this, the report states that a strategic intervention would be required to unlock the remaining dwellings at East Cullompton (i.e. such as the implementation of a new Motorway Junction as previously discussed).
- 3.1.6 It is understood that consultation events were held between the 14 September 2018 and the 6th October 2018 to gauge public opinion regarding the potential route options. Since this consultation it is understood that a preferred Link Road route option has been identified by MDDC for further development (i.e. Route Option B). A drawing (Drawing 70047809-Option B P01) showing the broad layout of this route has been produced by WSP on behalf of DCC and MDDC and is included as **Appendix A** of this note.
- 3.1.7 A MDDC cabinet meeting is also being held on the 31st January 2019 to discuss the Link Road. This cabinet meeting is being held to provide agreement that the design of the preferred Link Road option (i.e. Option B) be progressed in more technical detail. Furthermore, agreement would also be sought for £250,000 of S106 money collected for the Link Road project and to undertake air quality mitigation measures in Cullompton be used to fund this design process.
- 3.1.8 As discussed in section 4 below, whilst an initial proposed layout has been identified, there are still a number of technical studies that need to be undertaken prior to the Link Road design being finalised and it is evident that land will need to be acquired to deliver it. Furthermore, as also discussed in Section 5, funding has yet to be confirmed, which could lead to delay in terms of implementation until this is resolved.

4.0 Link Road Further Requirements

- 4.1.1 It is evident that the development of the preferred Link Road option is still at an early stage. There are still a number of technical studies that need to be carried out before the route is finalised and a planning application for the Link Road is submitted. In addition, once the route has been finalised and planning consent has been granted there is likely to be further detailed design that would need to be carried out prior to tender and construction. Some of the detailed elements that need further consideration are outlined below.

Ecology Impacts

- 4.1.2 An initial review of the ecological impacts of the Link Road, as outlined within the aforementioned "Route Options Report", has also concluded that the proposals would have an impact on priority habitats and provides the following statement in this regard:

"Option B also runs through hedgerows that are species rich with mature well-established trees that are identified as adding a significant ecological value to the site. This proposed route also runs through mature mixed woodland that comprises of deciduous and leylandi trees that are used as curtilage between playing fields and screening from the motorway and the railway line.

There is a tributary of the River Culm that traverses the west boundary and south-west section of the site. This stream is heavily lined and shaded by deciduous trees on both banks.

The wider environment was assessed as high value for bats with a large network of fields, hedgerows and woodland, as well as roosting opportunities in nearby structures. The grassland and woodland provided moderate potential for foraging bats, with the mature trees having high potential for roosting bats.

The site was also assessed as having a moderate to high value for birds, with the scrub, grassland and woodland providing suitable nesting and feeding opportunities.

The site location was assessed as having a moderate value for reptiles, (the grassland tussocks and scrub fringes) and invertebrates (white clawed crayfish).

There was no sign of badgers on site, however the overall site was assessed to hold potential for foraging badgers, hedgehogs and the River Culm had the potential to support otter and water voles. The pond on site provided potential for breeding habitat for great crested newts."

- 4.1.3 The overall impact of the proposals on ecology was therefore classed as Moderate Adverse. Thus, whilst this assessment does not consider any mitigation that would be implemented to address this impact it is evident that further work would need to be undertaken to develop the proposals to minimise these impacts.

Flood Risk

- 4.1.4 The preferred alignment is located entirely within a Flood Zone 3b classification. These areas have a high probability of flooding and are effectively part of the functional flood plain where water flows or is stored during flood events. As outlined within the report to the MDDC cabinet in relation to the Link Road (dated the 31st January 2019) initial flood modelling indicates that increased flood risk is forecast to occur around Tesco and the Long Meadow industrial estate. In this regard the cabinet report makes the following statement:

"If this is chosen as the preferred option then further work will be required to demonstrate the acceptability of the final detailed design, mitigation/compensation for lost floodplain, and provision of suitable warning systems and evacuation plans to ensure that road use restrictions and diversion measures can be instigated

Compensation and mitigation will also be required from an ecological perspective due to the likely loss of trees, hedge lines and floodplain habitat."

- 4.1.5 The initial designs of the Link Road also show an elevated cross section, which is expected given the flood constraints in this area. This would add further potential complication during construction as material would need to be brought in to create this elevated plateau.

- 4.1.6 It is also noted that due to flood constraints the road may require closure after/during periods of high rain flow once in operation. This is outlined in the aforementioned "Route Options Report" which states:

"As with Option A the whole of the Option B alignment is within flood zone 3b. Whilst it would be possible to raise most of the alignment length above flood levels, at the tie-ins to the existing highway network at Duke Street and Station Road the alignment would need to return to existing highway levels.

Duke Street, at the southern location where Option B is proposed to connect, is predicted to flood in the 50% flood scenario which equates to a probability of flooding once every 2 years.

Station Road at the northern location where Option B is proposed to connect, is predicted to flood in the 1% flood scenario, which equates to a probability of flooding once in every 100 years.

Whilst flooding of the proposed connection point on Station Road is predicted infrequently and to a depth of less than 200m, with Duke Street susceptible to frequent flooding with depths over 1m there would be periods when the road would need to be closed.

Whilst these periods of closure are expected to be short term, it would necessitate that advance warning signs and barriers closing the road for these periods are installed as part of the works. Similarly, there is potential the relief road would be closed in parallel with the M5 motorway, and therefore diverted traffic would still need to use the Fore Street. This would potentially limit options for regeneration of the town centre."

- 4.1.7 Thus, it is evident that the need to consider flooding of the road itself would further complicate the Link Road design and have a knock on impact on the future development of the town centre.

Third Party Construction Impact

- 4.1.8 As discussed in the aforementioned "Route Options Report" the proposed alignment will require the demolition of the existing bowling, cricket ground and some of the associated buildings such as the club house and pavilions. In this regard the "Route Options Report" makes the following statement:

"The Option B alignment would significantly impact Cullompton Cricket Club, Cullompton Bowls Club and to a lesser extent Cullompton Rangers Football Club. Significant costs associated with compensation and/or mitigation are expected beyond the construction costs and typical land purchase prices. Land to relocate the affected sports clubs would be expected to be required."

- 4.1.9 Consultation would also need to be carried out with the National Rail authority due to the proximity of the alignment to existing railway line to the east. The authority may require that the alignment be moved further west in this instance which could encroach further on the sports facilities to the west. In addition, the drainage impact on the railway line would also need to be assessed and mitigated where appropriate.
- 4.1.10 It is evident that the above third party considerations would need further technical review and consultation, which would take significant time to resolve.

Landownership Constraints

- 4.1.11 As discussed in the aforementioned "Route Options Report" route Option B (i.e. the preferred route) will affect 12 known areas of registered and unregistered land according to the assessed Land Registry information. Details of these areas are included within Appendix F of the "Route Options Report" and is also included within this briefing note as **Appendix B**. Notwithstanding the necessary land compensation required this may result in subsequent further timescale for implementation, particularly, if compulsory purchase powers need to be implemented.

Summary

- 4.1.12 It is evident from the above that there are still a number of practical and technical constraints to address prior to the preferred Link Road being finalised. These constraints could take significant time to resolve prior to the submission of a planning application and any scheme would be subject to further detailed design prior to construction in any case. In this regard, notwithstanding other constraints such as construction timeframes and scheme funding, it is evident that these technical elements would affect the certainty of the delivery of the Link Road in terms of timescale.

5.0 Link Road Scheme Costs and Funding

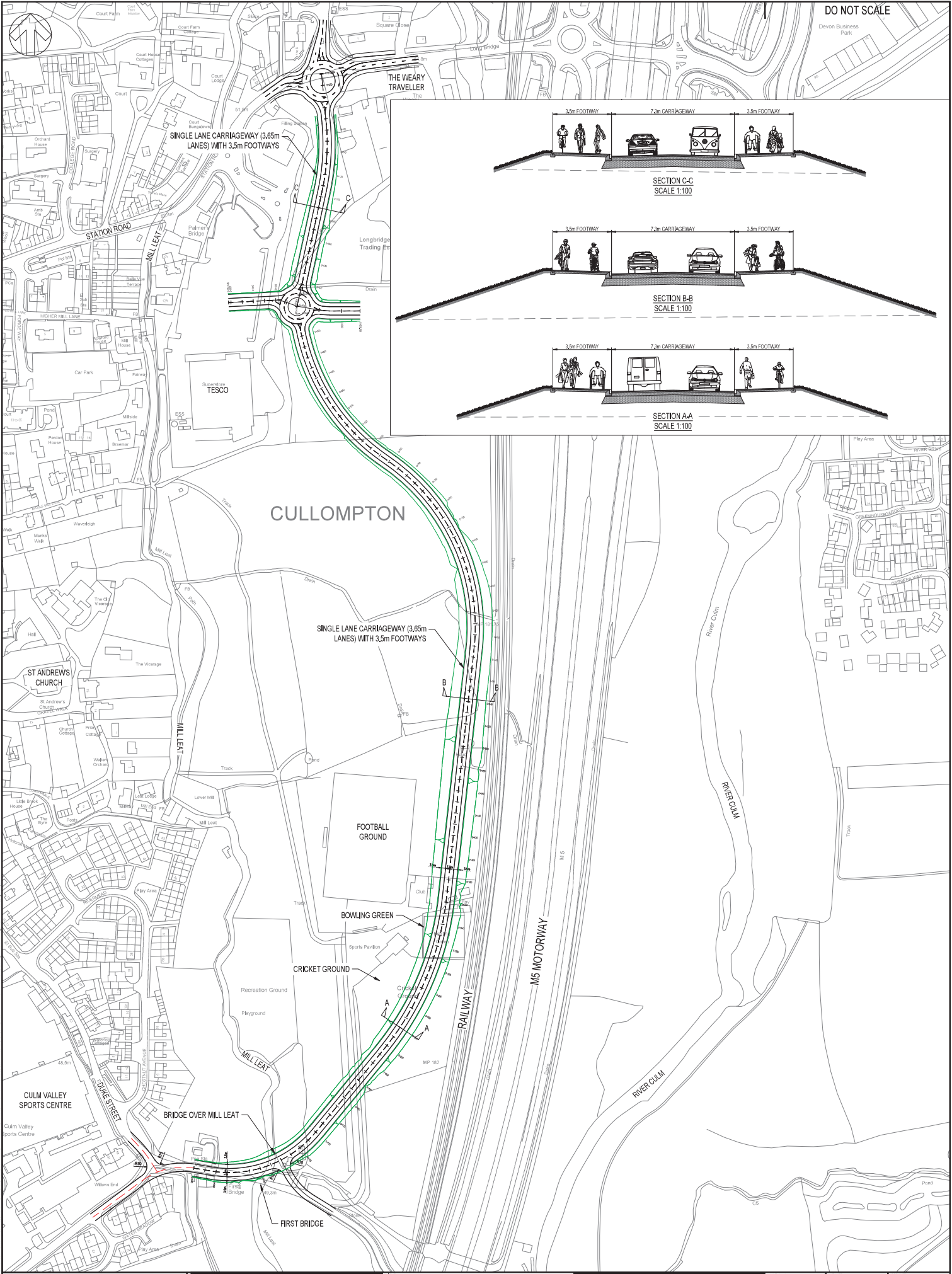
- 5.1.1 Initial cost estimates for the preferred Link Road scheme (i.e. as set out in **Appendix A**) are outlined within the "Preferred Route Options Report" which was produced by WSP on behalf of MDDC and DCC and was published in January 2019. The report states that the projected cost of the scheme would be £14 million which accounts for construction costs and estimated costs associated with land compensation.
- 5.1.2 The predominant source of funding for the Link Road as identified within the aforementioned "Route Options Report" is the Housing Infrastructure Fund (HIF). A bid has therefore been submitted for £10 million worth of HIF funding to Homes England. It is noted that, whilst a decision may be forthcoming, at the time of writing it is understood that confirmation has yet to be received and timescales may slip in this regard.
- 5.1.3 It is also noted that HIF funding is reliant on the benefits of a scheme being realised by March 2021 and therefore the Link Road would need to be for the most part complete and open for use by vehicles by this date. This represents a substantial risk as the Link Road is still at the consultation stage and therefore a planning application for the proposals has yet to be submitted. Furthermore, there are number of issues in terms of design and land ownership that are briefly discussed in the previous section that would need to be overcome. Thus, notwithstanding the timescales for construction, it is evident that there are number of stages that the proposals would need to go through prior to the design being finalised. It should also be noted that, even in the event that funding is confirmed, it is clear that there would still be a shortfall in funding which at present is calculated at £4 million.

- 5.1.4 Other sources of funding include S106 contributions from developers. As discussed above the traffic modelling associated with the proposed Link Road has shown that the road would provide additional capacity for 1,350 dwellings associated with North West Cullompton and 500 dwellings at Culm Garden Village. It is noted that these schemes are still in the process of agreement with planning applications being brought forward in a piecemeal manner. Thus, there is likely to be a significant time period before these funds becoming available.
- 5.1.5 It is understood that at present no other sources have been identified. Thus, if the HIF application is not successful this would mean that the only source of funding for the Link Road would be S106 contributions from developments requiring its implementation. On this basis, given that the full £14 million funding requirement would be dependent on the development of North West Cullompton and the first phase of East Cullompton this may bring into question the viability of these housing allocations.

6.0 Conclusions

- 6.1.1 It is evident that initial delivery of housing at the identified allocations at North West Cullompton and East Cullompton are reliant on proposals to deliver a Link Road to the east of the town. As discussed above this Link Road proposal is subject to a number of technical and practical constraints that would take significant time to resolve prior to the submission of a planning application and could therefore affect the subsequent timescales for construction and completion. To date there is no evidence to show how these issues would be resolved and in what timescale.
- 6.1.2 Furthermore, it is also evident that funding for this Link Road is mostly dependent on the delivery of this scheme as per the obligations of the HIF, which requires that the benefits of the scheme are realised by March 2021. On this basis it is likely that the delivery of housing within Cullompton would be held back which would most likely have an impact on housing trajectories within MDDC's Local Plan.
- 6.1.3 It is also noted that traffic modelling reports commissioned by MDDC and DCC have shown that the Link Road would only provide capacity for 1,350 dwellings at North West Cullompton and 500 dwellings at East Cullompton, and after this point more strategic infrastructure improvements would be required. Whilst MDDC's desire in the long term is to introduce a new motorway junction on the M5 to provide the further highway capacity for development at East Cullompton this strategic highway improvement has yet to be developed in detail. Furthermore, no funding has been identified to cover the significant capital investment (previously estimated by MDDC to amount to £50-£55 million) required for this scheme.

Appendix A: Preferred Link Road Option (Option B)



Appendix B: Land Ownership Constraints of Preferred Link Road Option (Option B)

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