



Department for  
Communities and  
Local Government

Our Ref: APP/F0114/A/14/2217216

Daniel Sharp  
Ian Jewson Planning Ltd  
1 Gas Ferry Road  
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BS1 6UN

12 September 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY CHARLES CHURCH SEVERN VALLEY & EDWARD WARE HOMES LTD  
ON RESIDUAL LAND AT CAPPARDS ROAD, BISHOP SUTTON  
APPLICATION REF: 13/04975/OUT**

1. I am directed by the Secretary of State for Communities and Local Government to say that consideration has been given to the report of the Inspector, Geoffrey Hill BSc DipTP MRTPI, who held a public local inquiry on several days between 27 January and 27 February 2015 into your client's appeal against the refusal of Bath & North East Somerset Council ("the Council") to grant outline planning permission for a residential development of up to 32 dwellings and associated infrastructure on residual land at Cappards Road, Bishop Sutton, BS39 5PS in accordance with application reference 13/04975/OUT, dated 13 November 2013.
2. On 20 May 2015, the Secretary of State recovered the appeal for his own decision because it involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority or where a neighbourhood plan has been made.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where otherwise stated, and with his recommendation. Accordingly, the Secretary of State dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural Matters**

4. Following the close of the inquiry, the Secretary of State wrote to the main parties on 22 February 2016 inviting their comments on the following matters:

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Jean Nowak  
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2 Marsham Street  
London SW1P 4DF

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- whether the Judgment of Mr Justice Holgate, which was handed down in the High Court on 27 January 2016 in the case of *Edward Ware Homes Ltd v Secretary of State for Communities and Local Government and Bath and North East Somerset Council* (Claim No. CO/3058/2015), concerning two other appeal cases that were considered at the same appeal Inquiry as this case, had any implications for this case; and
  - the fact that, since the appeal Inquiry, the Stowey Sutton Neighbourhood Plan (NP) had been made by Bath and North East Somerset Council on 11 September 2015; and the relevance of any policies therein to this case.
5. On 12 May 2016, the Secretary of State again wrote to the main parties to this appeal inviting their comments on the following matters:
- the implications, if any, of the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government*; and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168;
  - the Council's *Housing Land Supply Findings Report* dated April 2016 in which, at page 60, there is a summary of the Council's position on housing land supply; and
  - the Council's *Housing Trajectory 2011 – 2029*.
6. The representations received by the Secretary of State in response to the correspondence referred to at paragraph 4 above were recirculated to the main parties on 5 April 2016 and those received in response to that at paragraph 5 above were similarly recirculated on 31 May 2016. All the representations received are listed in the schedule at Annex A to this letter and copies may be obtained from the address at the foot of the first page above. However, the Secretary of State is satisfied that the issues raised do not affect the Secretary of State's decision and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to the parties.
7. An application for a partial award of costs was submitted by your client against the Council and an application for a full award of costs was made by the Council against your client (IR1.4). These applications are the subjects of separate decision letters.

### **Policy and statutory considerations**

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Bath & North East Somerset Core Strategy (CS), adopted in July 2014, the saved policies of the Bath and North East Somerset Local Plan (BANESLP), adopted in October 2007, and the Stowey Sutton Neighbourhood Plan (NP) which was 'made' in September 2015 and which includes Bishop Sutton.
9. The Secretary of State agrees that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR11.5 - 11.7 and 11.11, and that the primary development plan document in this appeal is the CS, in which Policy DW1 (IR11.7 *et seq*) sets out the basic structural objectives for the plan. Policy DW1

provides for Bath to be seen as the primary focus for economic development; for development in the rural areas to be located at settlements with a good range of local facilities and good access to public transport; and for an overall net increase in the supply of housing land of around 13,000 homes.

10. The CS includes the opportunity for further development in the villages identified in policy RA1 (which include Bishop Sutton) on sites adjacent to the Housing Development Boundary (HDB), but only where this has been promoted through a Neighbourhood Plan. However, the appeal site lies outside the HDB for Bishop Sutton as shown on the BANESLP Proposals Map. Similarly, policy SSHP01 of the Stowey Sutton NP indicates that the appeal site lies outside, although immediately adjacent to, the HDB boundary as indicated on the NP. Overall, therefore, the Secretary of State considers that the proposal is contrary to the development plan.
11. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* March 2012 (the Framework) and the planning practice guidance first published in March 2014 (the guidance).

### **Main issues**

12. The Secretary of State agrees that the main issues in this case are those identified by the Inspector at IR11.1.

#### *5-year housing land supply*

13. In coming to a view on the Council's housing land supply position, the Secretary of State has given careful consideration both to the Inspector's analysis of the position at IR11.8-11.30 and to the representations made by the main parties in response to his letter of 12 May 2016 (see paragraph 5 above). He has taken into account the Council's claim that they now have 5.4 years' housing land supply at District Level against your client's view that it is no more than 3.8 years; and that the main parties do not dispute that a 5 year supply of housing land can be demonstrated in the Rural Areas Policy Area, which covers the village of Bishop Sutton. Overall, the Secretary of State agrees with the Inspector (IR11.31) that it would be reasonable to accept that, while the Council cannot convincingly demonstrate a five year supply of deliverable sites across the District as a whole, there is more than a 5-year supply of housing land in all the Policy Areas except Bath.
14. However, the Secretary of State has gone on to carefully consider the Inspector's interpretation of paragraphs 14 and 49 of the Framework at IR11.61-11.65 as well as the representations received in response to his letters to the parties. He disagrees with the Inspector's interpretation at IR11.65 that the CS should not be considered out-of-date, and notes that the Council have not sought to argue in their later representations that the policy should be implemented in this way. Taking account of the uncertainty as to whether there is a 5-year supply of housing land across all the policy areas, the Inspector's comments at IR11.63 – 11.64 and representations made in response to his letter of 12 May 2016 in relation to the Court of Appeal judgment, the Secretary of State concludes that the relevant policies for the supply of housing are out-of-date and paragraph 14 of the Framework is engaged. Hence, in line with recent case law, the Secretary of State has gone on to consider whether the proposed scheme can be shown to be sustainable development and, if so, to determine whether the material considerations identified in this case are sufficient to outweigh the fact that the scheme is contrary to the Development Plan.

### *Potential prejudice to the implementation of the Core Strategy*

15. For the reasons given at IR11.32–11.51, the Secretary of State agrees with the Inspector that the corollary of allowing a greater proportion of housing development in the Rural Areas solely to make up the possible overall shortfall across the District would be to undermine the CS strategy of directing the main initiatives for growth to Bath (IR11.37). He agrees that some degree of limitation or restraint outside Bath would be appropriate for reasons of achieving a balanced, sustainable growth strategy but that permitting significant growth in excess of the current land supply situation in the Policy Areas outside Bath would undermine the principles of sustainable development set out in the CS, thereby significantly undermining the confidence of developers and residents in the plan-making process (IR11.40 and IR11.69).
16. Furthermore, the Secretary of State agrees with the Inspector (IR11.42 and IR11.69) that no evidence was put forward at the inquiry to show that new employment opportunities have been established in the village to match the amount of committed and proposed housing development. The proposed scheme would therefore go against the underlying strategic objective of the CS to direct growth to locations which can be seen to be sustainable in terms of a reasonable match between jobs and dwellings so as to minimise commuting for work purposes, and especially by car.
17. Against these arguments, the Secretary of State agrees with the Inspector (IR11.54-11.55) that, as one of the larger villages in the Rural Areas Policy Area, Bishop Sutton may not be an inappropriate place in which to provide a home needed by households living in the wider rural hinterland (IR11.54). He notes that the Unilateral Undertaking offers 35% affordable housing (11 units) of mixed sizes (IR11.55) and, while he agrees with the Inspector that 11 units may be more than the number needed to meet the local connections criteria, he accepts that it would not be in conflict with the relevant CS policy or unduly skew the housing mix on the proposed development (IR11.55).
18. Furthermore, the Secretary of State agrees with the Inspector at IR11.56 that there seems to be no reason why Bishop Sutton could not accommodate additional population in terms of the capacity of facilities and services; and he also notes (IR11.57) that none of the relevant agencies responsible for safeguarding nature conservation and landscape interests have expressed an objection to the proposed scheme.
19. Overall, therefore, the Secretary of State considers that, while there would be some benefits arising from the proposed scheme, it would not fulfil the social and economic criteria of sustainable development as set out in the Framework; and he agrees with the Inspector's conclusion at IR11.52 that granting planning permission for the proposed development would unacceptably prejudice the implementation of the CS and would be contrary to the objectives of the BANESLP. He therefore shares the Inspector's view that the circumstances in this appeal do not represent material considerations which justify making a decision other than in accordance with the development plan.

### **Planning conditions**

20. The Secretary of State has considered the Inspector's assessment of the conditions at IR10.1- 10.6 and the suggested conditions at the Appendix to the IR. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests

of paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing this appeal.

### **Planning obligations**

21. The Secretary of State has taken account of the submitted Unilateral Undertaking (IR10.7) and the Inspector's comments on it at IR10.8-10.11. He has noted that several of the items included are now covered by the Council's CIL Schedule and so deleted from the obligation (IR10.8), and he is satisfied that the remainder accord with the provisions of paragraph 204 of the Framework and meet the statutory tests in Regulation 122 of the CIL Regulations as amended. However, he does not consider that these provisions are sufficient to overcome the concerns he has identified in this decision letter with regard to this appeal proposal.

### **Planning balance and conclusion**

22. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with BANESLP policies HG4 and HG10 and NP policy SSHP01 and so not in accordance with the development plan overall. He has therefore gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. The Secretary of State is not satisfied that the Council can convincingly demonstrate a five year housing land supply across the District as a whole. Accordingly, he considers that the policies for the supply of housing are out-of-date and paragraph 14 of the Framework is engaged. He has therefore considered whether the proposed development is sustainable in terms of the principles set out in the Framework and, if so, whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the terms of the Framework as a whole. However, whilst attaching significant weight to the positive benefit that the contribution of housing, including affordable housing, would make to the District and to the fact that the village has capacity in terms of facilities and services, the Secretary of State considers that this is outweighed by the fact that granting planning permission for the proposed development would go against the objective of providing a reasonable match between jobs and dwellings, thereby calling into question its overall sustainability. The Secretary of State does not therefore consider that the circumstances in this appeal represent material considerations of sufficient weight to justify a decision otherwise than in accordance with the development plan.

### **Formal Decision**

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a residential development of up to 32 dwellings and associated infrastructure on residual land at Cappards Road, Bishop Sutton. BS39 5PS in accordance with application reference 13/04975/OUT, dated 13 November 2013.

### **Right to challenge the decision**

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter

for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

26. A copy of this letter has been sent to Bath and North East Somerset Council, with notifications sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

Richborough Estates

## Schedule of representations

DATE	CORRESPONDENT	
4 April 2016	Ms Rachel Tadman, Senior Planning Officer, Bath and North East Somerset Council	Response to ref back of 22 February 2016.
27 May 2016	Mr Ian Jewson,	Response to ref back of 22 February 2016.
3 April 2016	Mr Keith Betton Chairman, Stowey Sutton Parish Council	Response to ref back of 22 February 2016.
4 April 2016	Mr Daniel Sharp, Principal Planner, Ian Jewson Planning Ltd	Response to ref back of 22 February 2016
13 April 2016	Ms Rachel Tadman, Senior Planning Officer, Bath and North East Somerset Council	Response to recirculation email of 5 April 2016
15 April 2016	Mr Daniel Sharp Principal Planner Ian Jewson Ltd	Response to recirculation email of 5 April 2016
15 April 2016	Mr Keith Betton Chairman, Stowey Sutton Parish Council	Response to recirculation email of 5 April 2016
27 May 2016	Keith Betton Chairman, Stowey Sutton Parish Council	Response to letter of 12 May 2016
27 May 2016	Richard Walker, Bath and North East Somerset Council	Response to letter of 12 May 2016
27 May 2016	Ian Jewson, Director, Ian Jewson Ltd	Response to letter of 12 May 2016
10 June 2016	Ian Jewson, Director, Ian Jewson Ltd	Response to recirculation email of 31 May 2016

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# Report to the Secretary of State for Communities and Local Government

by Geoffrey Hill BSc DipTP MRTPI

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

Date: 3 September 2015

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TOWN AND COUNTRY PLANNING ACT 1990

BATH & NORTH EAST SOMERSET COUNCIL

APPEAL BY

CHARLES CHURCH SEVERN VALLEY & EDWARD WARE HOMES LTD.

Inquiry held 27-31 January, 3-6 February and 25-27 February 2015

Residual land at Cappards Road, Bishop Sutton, BS39 5PS

File Ref: APP/F0114/A/14/2217216

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## **GLOSSARY OF ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT**

AONB	Area of Outstanding Natural Beauty
BANES (or B&NES)	Bath and North East Somerset Council (the local planning authority)
BANESLP	Bath and North East Somerset Local Plan 2007
CIL	Community Infrastructure Levy
CS	Bath and North East Somerset Core Strategy 2014
HDB	Housing Development Boundary
MOD	Ministry of Defence
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SHLAA	Strategic Housing Land Availability Assessment
SSNP	Stowey Sutton Neighbourhood Plan
dpa	dwellings per annum

Richborough Estates

**File Ref: APP/F0114/A/14/2217216**

**Residual land at Cappards Road, Bishop Sutton, BS39 5PS**

- 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 Charles Church Severn Valley & Edward Ware Homes Ltd., against the decision of Bath & North East Somerset Council.
- The application Ref. 13/04975/OUT, dated 13 November 2013, was refused by notice dated 14 March 2014.
- The development proposed is described as "outline planning application for a residential development of up to 32 dwellings and associated infrastructure".

**Summary of Recommendation: The appeal be dismissed.**

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## **1 PROCEDURAL MATTERS**

- 1.1. The appeal which is the subject of this Report was considered at an inquiry held 27-31 January, 3-6 February and 25-27 February 2015 at the Guildhall, Bath. The inquiry considered appeals against the refusal of three applications for planning permission made to Bath & North East Somerset Council, relating to three geographically separate sites across the District – Bishop Sutton (the subject of this Report), a site at Paulton (appeal Ref. APP/F0144/A/14/2214596) and a site at Boxbury Hill, Midsomer Norton (appeal Ref. APP/F0144/A/14/2215930).
- 1.2. The arguments put before the inquiry relating to housing land supply in Bath & North East Somerset were common to all three appeals. Arguments were also heard in respect of the Council's reasons for refusing the individual applications on site-specific grounds. The Appeal Decisions (and associated Costs Decisions) for the other two appeals were issued by The Planning Inspectorate on 20 May 2015.
- 1.3. On 20 May 2015 the Secretary of State issued a direction that the appeal which is the subject of this Report be determined by himself. The reason for this direction is because "the appeal involves a proposal for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made".
- 1.4. At the inquiry applications for awards of Costs were made by Charles Church Severn Valley & Edward Ware Homes Ltd., against Bath & North East Somerset Council, and by Bath & North East Somerset Council against Charles Church Severn Valley & Edward Ware Homes Ltd. These applications are the subject of separate Reports.

## **2 THE SITE AND SURROUNDINGS**

- 2.1. Bishop Sutton is a small village about 10 miles to the south of Bristol. The appeal site is an area of agricultural land (currently unused) accessed off Cappards Road (the site is shown edged in red on Plan A.1). Immediately to the east of the appeal site is a parcel of land being developed for housing (shown on Plan A.1 and highlighted in yellow stipple on plan A.5).
- 2.2. The site is approximately 175 metres from the junction of Cappards Road with Wick Road – the main road through the village - which is part of the

A368. Along Wick Road are the village school, church, village hall, the local shop, a pub, a restaurant and a garage. There is a regular bus service to Bristol, with a weekly service to Bath.

- 2.3. The village is surrounded by agricultural land which, to the west of the appeal site, is within the Mendip Hills Area of Outstanding Natural Beauty (AONB). About 450m to the north-west of the appeal site is Chew Valley Lake, a reservoir and site of nature conservation interest.

### **3 PLANNING POLICY**

- 3.1. The development plan for the area comprises the Bath & North East Somerset Core Strategy (CD 03), together with saved policies of the Bath & North East Somerset Local Plan (CD 05).
- 3.2. At the time the planning application was determined by the local planning authority the Core Strategy had not been adopted, but was at an advanced stage of preparation, it being the subject of an examination by an appointed Planning Inspector. In June 2014 the Core Strategy was found sound by the Inspector, and adopted by the Council in July 2015.
- 3.3. A neighbourhood plan is under preparation for Stowey Sutton parish (Stowey Sutton Neighbourhood Plan - SSNP). The plan covers the village of Bishop Sutton, including the appeal site. The Neighbourhood Plan was examined during April/May 2015, with the examination being considered through written representations. The Examiner asked for modifications to be made to the Plan to meet the basic conditions. With the recommended modifications the Examiner concluded that the Stowey Sutton Neighbourhood Plan:
- has regard to national policies and advice contained in guidance issued by the Secretary of State;
  - contributes to the achievement of sustainable development;
  - is in general conformity with the strategic policies contained in the Development Plan for the area;
  - and will not breach, and is otherwise compatible with, EU obligations and human rights requirements.
- 3.4. The Examiner recommended that the SSNP with modifications should proceed to a Referendum.
- 3.5. A Referendum was held on Friday 7 August 2015. If the Plan receives a majority vote (51% or more of the votes), it will be subject to a single member decision of Bath & North East Somerset Council in August/early September 2015 and brought into force and 'made' by Bath & North East Somerset Council.

### **4 THE APPEAL PROPOSALS AND REASON FOR REFUSAL**

- 4.1. The appeal scheme is an outline application for residential development of up to 32 houses. All matters are reserved for subsequent consideration.
- 4.2. The scheme is described as Phase 3 of development taking access off Cappards Road. The illustrative plan supporting the application shows a small estate development (Plan A.7), which would be a continuation of the housing

development presently under construction immediately to the east of the appeal site (noted as Phase 2 on Plan A.7). The scheme would include a proportion (35%) of affordable housing. Landscape planting is indicated around the western and southern boundaries of the site on Plan A.7.

- 4.3. A single reason for refusal was given by the Council, which is set out on the Decision Notice dated 14 March 2014. This says – in essence – that the site of the proposed scheme is outside the Housing Development Boundary for the village and to allow additional development here would prejudice the scale, location and phasing of new development in the emerging Core Strategy.

## **5 OTHER AGREED FACTS**

- 5.1. A Statement of Common Ground, dated December 2014 sets out the planning history of the site and the chronology of the current application.

## **6 THE CASE FOR BATH & NORTH EAST SOMERSET COUNCIL**

- 6.1. Sometimes planning appeals turn on matters of detail. Differences in calculations can be significant, even determinative. This was often the case with retail inquiries where issues of qualitative and quantitative impact, need, footfall and the like could take centre stage in the debate. Even so, in the final analysis, the decision on whether or not to grant planning permission depends not on matters of detail but on matters of planning judgment.
- 6.2. However many appeals do not involve such issues of detail. They involve issues of principle requiring the decision maker to take a step back and to examine the wider picture, and to consider the implications of the respective cases advanced in support of, and against, the development. Some might say that these appeals are little more than an opportunistic attempt by a developer to undermine a process in which it chose not to participate. Rather than challenge the issue of housing land supply by engaging in the examination process and producing evidence to support its contentions, or by launching a statutory challenge under section 113 of the Planning and Compulsory Purchase Act 2004 to the soundness of the plan, it has chosen the route of section 78 appeals, and so soon after adoption of the Core Strategy.
- 6.3. The appeal is an example of this. It falls to be considered against the backdrop of a recently adopted Core Strategy, one that – at the time of the inquiry - was not even eight months old. The appeal site lies outside the existing housing development boundary (HDB) for Bishop Sutton (Appendix 4 to Mr Stone's proof of evidence shows the HDB for Bishop Sutton, annotated with the appeal site, and the site of recent planning applications for housing in and around the HDB). It does not involve a site identified for possible allocation or permission. However the fundamental theme is a flawed argument that the recently adopted Core Strategy's policies for housing delivery are somehow out of date.
- 6.4. The appeal represents a significant, if not existential, challenge to the integrity and operation of the development plan-led system. If allowed it would render the efforts and expense of this local planning authority (and by

extension every other local planning authority) to meet the policy imperative set by central government to put in place up to date development plans to ensure that there is a significant boost to the supply of land for new housing. Put bluntly, local planning authorities might say: "why should we bother preparing core strategies if they can be so lightly tossed aside?" Similarly other developers who did take part, and the wider public at large, might also question why they should take part in the development plan preparation process. What is more, these appeals also threaten the integrity and operation of the National Planning Policy Framework (NPPF), which provides clear policies that require development plans to be kept up to date to ensure a continuing supply of housing land. Therefore the appeal raises vital issues of principle that are of central importance to the planning system and risk stripping the development plan-led system of any real meaning. It would, in truth, result in a development free for all.

- 6.5. As this authority has so recently demonstrated, through the adoption of its Core Strategy, it has a 5 year housing land supply (and 20% buffer). It is not the Council's intention to engage to any real extent with the Appellant's undesirable and unnecessary attempt to somehow cast doubt upon the deliverability of the Core Strategy's housing land supply. It does not need to do so and some might say that it is undesirable, unnecessary and unsatisfactory for the Appellant to be allowed to effectively re-argue points discussed (by others) less than a year ago in the Core Strategy examination. Furthermore such an approach is also contrary to the policy set out in the NPPF and the Planning Practice Guidance (PPG).
- 6.6. In the Inspector's pre-inquiry note of 19 December 2014 two main issues were identified for this appeal. The first related to the fundamental theme. The issue was: whether there is a five year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the direction for growth and the release of housing sites.
- 6.7. This issue raises two particular questions. The starting point must be the Core Strategy and the local planning authority's assertion that it does have a five year housing land supply. If it does then, on any reading of the NPPF, the issue is at an end and these appeals must be dismissed. Therefore these submissions concentrate on the following two questions:
- (a) Whether, as a matter of principle, it is appropriate in the context of a section 78 appeal to challenge a recently adopted Core Strategy's five year housing land supply?
  - (b) If yes, then whether, in the circumstances relating to this Core Strategy, it is appropriate to do so in this appeal?
- 6.8. If the answer to either of those questions is "no" then these appeals must be dismissed.
- (a) Whether, as a matter of principle, it is appropriate in the context of a section 78 appeal to challenge a recently adopted Core Strategy's five year housing land supply?*

- 6.9. It is accepted by all parties that the starting point for determining this appeal is section 38(6) of the Planning and Compulsory Purchase Act 2004. As paragraph 12 of the NPPF makes plain, the NPPF cannot displace the statutory status of the development plan and proposed development that conflicts with the provisions of an up to date Local Plan should be refused unless other material considerations indicate otherwise.
- 6.10. In this appeal, the Bath & North East Somerset Core Strategy, which is Part 1 of the Local Plan, was only adopted on 10 July 2014. The Core Strategy inspector's report was dated 24 June 2014 and the examination hearings concluded on 10 April 2014. The document had been submitted for examination on 3 May 2011. A long, arduous path was followed before it was eventually found sound. Thus, at the time of this inquiry, the Core Strategy was only 7 months old since its adoption and 8 months since the inspector reported. It was less than a year since the examination hearings concluded.
- 6.11. In paragraph 88 of his report, Mr Emerson (the Inspector conducting the examination into the Core Strategy) stated: "Accordingly, the Government's overall intention of boosting housing delivery is best achieved by the adoption of this plan as soon as possible. The Council's most recent approach to calculating five year supply is sound." It is clear that this authority lost no time in following Mr Emerson's lead and adopted the Core Strategy as soon as was possible. When looking at the Strategic Housing Land Availability Assessment (SHLAA) sites and delivery he concluded at paragraph 90 that: "The credibility of the SHLAA is now much greater than at the beginning of the Examination and there is a much closer alignment between the delivery assumptions made in the SHLAA and the landowner/developer intentions for many individual sites. The SHLAA rightly takes a more cautious approach to capacity in most cases where there is a dispute or uncertainty. Delivery on strategic allocations generally reflects the position in the Statements of Common Ground for each allocation between the Council and landowners/promoters. Even if delivery on a couple of these sites were to be delayed by a further year, it would result in only a small reduction in the overall five year supply." It is worth reflecting on this comment when considering the evidence of Mr Harbottle and Mr Jewson, neither of whom played any part in the Core Strategy preparation and examination process. Furthermore, Mr Harbottle was only instructed in November 2014 so one questions the reliability of his overall assessments, especially where his view is that Mr Walker is wrong to rely on the delivery timetable for Bath Riverside that Mr Walker got from the developer. It appears that Mr Harbottle knows better than the developer - one of the country's most experienced and highly regarded housing developers.
- 6.12. Finally, at paragraph 99 Mr Emerson concluded: "Taking account of my conclusions under Issue four that four out of the five proposed strategic allocations are sound, the SHLAA provides robust evidence that the adoption of the Core Strategy would ensure that there is a five year (plus 20%) supply of housing on an ongoing basis. Provision over the whole of the plan period is tight with no flexibility to accommodate changed circumstances. But this would only become a significant issue for delivery towards the end of the plan period and the need for further provision can be re-assessed at the planned five year reviews."

6.13. Therefore, as at 10 July 2014 there was robust evidence that this authority could demonstrate that there is a five year (plus 20%) supply of housing. (Diagram 3b in the Core Strategy sets out the housing trajectory for the entire plan period on an annual basis commencing with the date of adoption.) On this basis is it right that in February 2015 the Appellants should be allowed to question this conclusion? The Inspector in the Stafford appeal<sup>1</sup> clearly thought not. That appeal involved a similar issue - there the development plan was adopted on 19 June 2014 a few weeks before the section 78 appeal inquiry opened. That decision contains some useful pointers of relevance to these appeals and to other similar situations where collateral challenges are mounted to recently adopted development plans. The following points need to be taken into account:

- (1) The NPPF, despite its emphasis on housing delivery, promotes an explicitly plan-led system and the B&NES Core Strategy has just been adopted following a thorough and lengthy independent examination (which it is to be noted no party has sought to challenge in the courts);
- (2) The fact that the Core Strategy is but just Part 1 of the eventual completed development plan does not diminish its importance or relevance - see *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 paras 42-64;
- (3) Housing land availability for the purpose of applying national policy is frequently portrayed by participants in appeal proceedings as an absolute i.e. simply a matter of fact. In the Stafford inspector's experience it is not - it necessarily involves informed judgments about the prospects for a multiplicity of sites - in this appeal neither Mr Harbottle nor Mr Jewson questioned this. Mr Harbottle's evidence (to which Mr Jewson played a subservient role) was almost entirely based on his own professional judgment based on his experience and the information that he had gathered in the limited time between his instruction and his proof being completed. As will be seen later, some of his conclusions have been overtaken by events which amply justifies the Stafford inspector's comment;
- (4) The first footnote to paragraph 47 of the NPPF which defines deliverability for the purposes of five year supply and the PPG regarding the examination of land supply are especially pertinent. In Stafford, as here, the examination inspector concluded that he was confident that there would be a robust five year supply of deliverable housing sites. Consequently he held that: "in the absence of truly compelling evidence to the contrary, it would not be for me to take an alternative view";
- (5) In any event, the content and the tenor of the PPG advice [3-033] that five year housing land supply deliverability will have been thoroughly examined prior to adoption in a way that cannot be replicated in the course of determining individual applications and appeals means that

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<sup>1</sup> Appeal Ref: APP/Y3245/A/14/2217578 – Document BANES 04



the PPG discourages the constant questioning of such findings in appeal proceedings;

- (6) Paragraph 47 of the NPPF clearly and unequivocally states that local planning authorities should "identify and update annually a supply of deliverable sites...." In this appeal it is beyond debate that the anniversary or the time for the first annual updating of the supply of deliverable sites is some months off. It is therefore simply untenable for the Appellant to suggest that the local planning authority should be able to demonstrate today that it has a five year housing land supply. In reality what it is suggesting is that every local planning authority should be able to demonstrate on a daily basis, each and every day of each and every year that it has a five year housing land supply. This is as untenable as it is unreasonable but that is what it is actually suggesting; and
- (7) As PPG 3-033 advocates "...local planning authorities should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply. By taking a thorough approach on an annual basis, local planning authorities will be in a strong position to demonstrate a robust five year supply of sites."

- 6.14. Thus the relevant wording of both the national policy as set out in paragraph 47 of the NPPF and the guidance set out in PPG 3-033 is clear and unequivocal - local planning authorities need to examine and update their five year housing land supply on an annual basis. It is, in essence, no different from a company's annual balance sheet analysis. Policy and guidance therefore requires local planning authorities to prepare a five year housing land supply "balance sheet" on an annual basis only and from which it will be able to determine whether or not the housing trajectory (similar to a cashflow forecast) is still being met and whether or not "assets" outweigh "liabilities" i.e. whether enough new homes have been delivered in that year to ensure that there will continue to be a five year housing supply. If the trajectory falls short then there may have to be an injection of new capital in the form of new identified sites.
- 6.15. The alternative, as promoted by the Appellants, is that set out above i.e. that local planning authorities must be able to demonstrate on a continuing daily basis that there remains in place a five year housing land supply. This approach relies on interpreting paragraph 14 in such a way that the key date for determining the issue of whether or not a five year housing supply exists is the date of the determination of any particular planning application. Such an approach is absurd. For a start it interprets one passage from one paragraph of the NPPF out of context. As the Supreme Court made clear in *Tesco Stores v Dundee City Council* [2012] UKSC 13 the proper interpretation of policy (whether in the development plan or in national policy) ultimately is a matter for the court. But it is clear from that decision that such policies have to be viewed in their context. Therefore paragraph 14 can only be interpreted alongside paragraph 47 and also alongside the PPG. Paragraph 14 itself advises that decision taking must be assessed against the "policies in this Framework taken as a whole" and paragraph 6 similarly mandates this approach. Therefore paragraph 14 can only be interpreted alongside

paragraph 47 which requires annual updates. It accords with the guidance in the PPG and with common sense. An interpretation of one part of paragraph 14 in isolation would mean that a local planning authority that received many applications for planning permission for new housing on an almost daily basis would have to go through the type of exercise suggested by these Appellants each and every time one of those applications came forward for determination. Such an approach is absurd, unreasonable and unsupported by policy. It is plainly wrong.

- 6.16. The Appellants' approach is also confused and inherently contradictory. In paragraph 1 of the Appellants' Opening Submissions on the five year housing supply it was clearly stated that: "This Council is required to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing with an additional buffer when assessed against its housing requirements." Yet a few sentences later it asserts "The requirement to demonstrate a robust supply of housing sites in this way is an ongoing one." The only way of reconciling these two apparently contradictory statements is to say that the on-going basis described means that for each and every year of the plan's life the local planning authority must identify and update annually (i.e. on its anniversary) its housing land supply. If it fails to do so then it may be penalised on appeals. In reality the Appellants' submissions are little more than an artificial device to try to re-open a debate (in which it declined to participate) on the five year housing land supply only a matter of months after the Core Strategy Inspector found there to be a sufficient supply.
- 6.17. It follows that, as a matter of principle, a challenge to an adopted Core Strategy that is less than a year old on the basis that on any given day in that first year when a particular planning application falls for determination the local planning authority had not demonstrated that it still has, on that day, a five year housing land supply is wholly unacceptable. This situation would also apply in subsequent years if the local planning authority had undertaken its annual "balance sheet" exercise. So, if in year three of a Core Strategy there had been produced two "balance sheets" (with any necessary tweaking or injection of new sites) that showed that at the beginning of the third year there remains a robust five year housing land supply then the local planning authority would be able to rely on the current balance sheet analysis and not need to constantly update, on a daily basis, the five year housing land supply calculation. Conversely, of course, if a local planning authority, failed to produce an annual "balance sheet" then it may not be able to demonstrate that it has a five year housing land supply in which case it might engage paragraph 14 on the basis that its policies were then out of date. That is what paragraph 14 and 47 properly mean.
- 6.18. For this reason alone the appeal should be rejected.
- (b) Whether, in the circumstances relating to this Core Strategy, it is appropriate to do so in this appeal?*
- 6.19. It may be that there is no need to consider the other question that is posed above. However to fully address the first main issue it is necessary to consider whether in the circumstances it is appropriate to challenge this particular Core Strategy.

6.20. Plainly is not. The reasons for this are advanced below.

- (1) The Appellants have gate-crashed the party. They have made no real attempt to engage with the Core Strategy preparation process let alone appear at the relevant examination hearing. Mr Jewson confirmed as much in cross examination. In cross examination he appeared to accept that, as at the date of the inspector's report, there was in the inspector's view a robust five year housing land supply. However he also appeared to suggest that his evidence (which he seemed reluctant to elaborate on) showed that at the date of adoption there was not, in fact, a five year housing land supply. However, what this "evidence" comprised was vague. Moreover it was neither produced to this inquiry nor to the Core Strategy examination. We are therefore expected to believe that as at the date of adoption Mr Jewson held, on behalf of his clients, evidence that, in effect, called into question the soundness of the Core Strategy. Such an assertion is as untenable as it is unreasonable. Yet we are expected to believe that this should now form the basis for casting aside the Core Strategy policies less than a year into their adoption.
- (2) On a similar theme, it is important to record that, despite apparently being in possession of this evidence at the date of adoption that suggested that the Core Strategy was not sound, Mr Jewson confirmed in cross examination that the Appellants chose not to challenge the adoption of the Core Strategy in the courts via a section 113 statutory challenge but instead chose to challenge the Core Strategy by appeal. In the Council's submission this was a flawed, if not abusive, approach. The 2004 Act contains a clear statutory route of challenge that could and should have been adopted. No doubt had they done so the Appellants would have had to produce to the court their "evidence" to support the assertion that there was no five year housing supply. They would also have had to explain to the court why they did not submit this evidence to the Core Strategy for the inspector and the other parties, including all those other landowners and developers who did participate, so that they could all comment on the reliability of this "evidence". However, if this appeal is dismissed as it must be, then were the Appellants to be so unwise as to attempt to challenge the decision by way of a section 288 (of the 1990 Act) application, this local planning authority will raise this issue with the court. In other words, the Appellants cannot duck addressing this issue for much longer.
- (3) In the Appellants' Opening Submissions it was asserted without any authority that the burden of demonstrating that there is a robust five year supply rests firmly on the Council. That is not correct. Whilst the general burden of doing so rests with the local planning authority during the Core Strategy preparation and adoption process, and on an annual basis thereafter, in a situation where the Core Strategy is less than one year old or where regularly annual updates have been produced, then the correct approach is that advocated by Inspector Jessica Graham in the Radstock DL of 18 July 2014 (APP/F0114/A/13/2203361) at paragraph 28 that it would require "clear and convincing evidence that his conclusion was wrong". This

can only come from the Appellant. A similar approach was taken by the Inspector at Stafford.

- (4) What "evidence" they did produce came from Mr Harbottle. Mr Jewson's evidence in relation to all three appeals heard at this inquiry piggy backed on Mr Harbottle's evidence. It is strange therefore that, given the points raised in the two preceding subparagraphs that Mr Jewson did not rely on his own pre-existing "evidence". It is also regrettable that Mr Harbottle's evidence (he was only instructed at the beginning of November 2014) in effect questions the findings of the Core Strategy inspector but, having produced his evidence to this inquiry only, it has not been subjected to critical scrutiny by those who did participate in the examination.
- (5) Neither Mr Jewson nor Mr Harbottle had any relevant experience of Core Strategy preparation nor had they participated to any real extent in examination hearings. Mr Harbottle is not by training a planner. He is a general practice surveyor with an emphasis on development. The limit of his experience is highly relevant to his evidence because, in reality, his evidence was little more than subjective judgment based on limited information. His proof of evidence is liberally sprinkled with caveats, qualifications and reservations such as "my own assumptions" (5.1.2.ii), "I have reflected on the nature of the residential market" (5.2.5), "in line with my own experience and knowledge of each site" and "in my view" (5.2.5.ii), "I have made an appropriate allowance in my bespoke development programme" (5.4.5) and "Based on my own experience" (5.5.9). In reality his evidence was little more than highly subjective assessment of development sites that he had only begun to examine at the beginning of November. It was woefully short on actual hard evidence. It is also alarming that in paragraph 4.2.1 he sets out what he considered to be the underlying principles regarding the assessment of a five year housing land supply derived from two High Court cases and two appeal decisions, none of which he admitted in cross examination he had actually read. Just how sound can his subjective assumptions be when based on this superficial assessment of what he calls the "underlying principles"? Indeed his knowledge of the planning process and its timeline was similarly sketchy. He admitted in cross examination that the key stages identified in paragraph 5.3.7 were given to him by Mr Jewson. It was not based on his own professional knowledge or experience. These major failings call into question the reliability of his evidence. Similarly his table 11 on page 25 was also flawed to the extent that it was meaningless. For a start it only became clear in cross examination that the table covered a 10 year period so that, at its highest, design issues featured on average less than four times a year as a reason for delay. Also, it gave no details as to the substance of these reasons whether the design issue involved was a major or minor issue. Furthermore it could not identify whether or not there was any double counting so that it is possible that one development may have been delayed for a combination of reasons so that it featured under different headings thus skewing the figures. This table is one example of the wholly unsatisfactory nature of Mr Harbottle's analysis. He also then sought

assistance from a report prepared for Gladman Developments - see paragraphs 5.8.1 - 5.8.7 which was prepared for some reason in connection with major urban extension sites of 500+ dwellings. It was, in truth, of no relevance to this appeal other than to somehow lend "credibility" to his judgments especially when the Gladman supporting evidence did not include any evidence from this local planning authority.

- (6) The crux of Mr Harbottle's contribution can be seen from his paragraph 6.1.6 where he contends that his view is based on "a combination of new evidence, events moving on since the Core Strategy EiP, and my own detailed site analysis on an individual basis" which led him to conclude that the latest SHLAA housing trajectory will not be developed in line with the timescales assumed by the local planning authority. Of course the starting point for the analysis of his evidence is Mr Harbottle's inevitable concession at paragraph 3.3.1 that he does not challenge the Core Strategy housing requirement of 13,000 dwellings between 2011 and 2029 nor did he challenge the five year housing requirement as being 1,012 dwellings per annum producing a total five year figure of 5,062 - see paragraph 3.2.4. It is also important to mention that Mr Harbottle appears to have misrepresented the position with regard to the November 2014 iteration of the SHLAA. This was a draft document produced for him by Mr Walker to enable Mr Harbottle to prepare his evidence. It was a draft released to him for his benefit and assistance. The only iteration that is relevant is the final version published in December 2014. It is also important to repeat that at paragraph 4.3.5 Mr Harbottle effectively questions the reliability of the findings of the Core Strategy inspector with his swipe "if indeed it ever did have a five year housing land supply". Such an approach means that Mr Harbottle's evidence should be treated with due caution and appropriate scepticism, particularly given his lack of experience in forward planning, the lateness of his instruction and his client's total disengagement with the Core Strategy process.
- (7) We are asked to accept Mr Harbottle's analysis and conclude that the true five year housing land supply figure is 4,589 against a figure of 5,062. Mr Walker's original evidence was that 5,945 dwellings would come forward. Mr Walker was ready to acknowledge that he would concede some figures. According to a document produced by the Appellants on Wednesday 25 February 2015 the Appellants argue that these concessions reduce Mr Walker's figure from 5,945 down to 5,407. Even if this interpretation of Mr Walker's concessions is correct that is well above the required figure. However this document cannot be accepted without comment. Mr Walker did not accept a reduction of 100 for Bath Western Riverside - he preferred to accept the figure of 696 given to him by the developer not Mr Harbottle's lower figure. In cross examination Mr Walker commented being "Frankly our analysis and Savills - we are not a million miles away so I will go with Crest". Mr Walker also said that MOD Foxhill could go down to 200 down from 277 to allow for delays. However there have been no delays since the PPA was signed and it is now a matter of record that the recent

application for outline planning permission for up to 700 dwellings on a residential-led mixed use development was recently approved in line with officers' recommendation. Thus Mr Harbottle's observation at paragraph 6.2.29 that: "As it currently stands, I assume that the LPA is not in a position to grant a valid consent beyond the target decision date as there appears to be no clear timeframe for planning committee..." needs to be seen in that light. Similarly Mr Harbottle made an identical assumption about the MOD Warminster Road site - see paragraph 6.2.40 - yet that site also received a resolution to grant at the same committee meeting. Thus these two significant examples show the inherent difficulties in Mr Harbottle's exercise and they inevitably lead to an increase in the figure that the Appellants attribute to Mr Walker of 5,407. To borrow from his own evidence, Mr Harbottle's assessment has been undermined by a combination of new evidence and events moving on since his proof was prepared. It also highlights the wisdom underpinning the notion of annual updates and the difficulties in an ad hoc daily snapshot approach advocated by the Appellants.

- 6.21. It follows that it would be inappropriate to allow this Core Strategy to be challenged in the manner advocated by the Appellants. It produces an uncertain outcome and one that can be rapidly overtaken by events. The answer to the main issue is clear: there is a five year housing land supply and more. In any event it is not appropriate to challenge it in this manner and so soon after the Core Strategy was adopted. Furthermore the Appellants' attempt, as undertaken by Mr Harbottle, is utterly futile and prone to inherent insurmountable difficulties. It is not a simple mathematical exercise. In fact it would be an insult to the science of mathematics to call it so. It relies heavily on personal subjective opinions - which sites to factor in and which to omit - and personal judgment - will this application come before committee and when - as to make it, at its highest, an art form? It is certainly not a science, it is not even alchemy.
- 6.22. Turning now to the individual appeal. This is dealt with briefly as the objections to it are primarily (but not exclusively) policy based. The site is outside the HDB, in the Rural Areas. It is subject to strong policy objections but there are certain features that are still worth briefly highlighting.
- 6.23. The Cappards Road application seeks permission for up to 32 houses. Consideration of this site must take into account the recent two dismissals of appeals (each for 9 homes) for residential development on sites similarly located outside the HDB. These were identified by Mr Stone at paragraph 8.13 of his proof (APP/F0114/A/14/2218780 and 2217941) although at that stage the determination of these appeals was still unknown. However during the course of this inquiry the Appeal Decisions were received. Consistency in decision making is important and there was no evidence to suggest that there are any features of this site that distinguishes it from the two sites that were refused permission on appeal. These two dismissed appeals are therefore highly material considerations for the purposes of this appeal. Furthermore Mr Stone explained the rationale behind the decision to approve the Temple Cloud development outside the HDB and how the circumstances there were different to the appeal site. No comfort can be drawn by the Appellants from that decision. Thus it is clear that this appeal proposal is contrary to policies

DW1 and RA1 of the adopted Core Strategy and lie outside the adopted HDB. It is not needed to contribute to the five year housing land supply. Bishop Sutton has already seen a level half as much again as policy RA1 allocates. This appeal is, therefore, wholly without merit and should be dismissed.

- 6.24. The Council notes that the Stowey-Sutton Neighbourhood Plan does not identify site allocations, but does recognise there will be some new residential development within the village. However, the Plan states that this development should be in accordance with the most recent Housing Needs Survey and should be limited to 'in-fill development' within the HDB boundary or a rural exception site. The focus of much of the Plan is about creating a high quality built environment and protecting and enhancing the rural setting of the village whilst encouraging limited sustainable growth. As such the Neighbourhood Plan does not contain policies or allocations that support the proposed development which is the subject of this appeal. The Neighbourhood Plan has been developed through extensive evidence and consultation which aligns to the adopted B&NES Core Strategy.
- 6.25. In the view of the local planning authority, what these Appellants and this appeal mean is that, for the sake of the potential provision of 32 new homes by the end of the first five year period the integrity and efficacy of the entire development plan led system should be sacrificed. The appeal must be dismissed.

## **7 THE CASE FOR CHARLES CHURCH SEVERN VALLEY AND EDWARD WARE HOMES LTD.,**

### ***The Issues***

- 7.1. Prior to the start of the inquiry the Inspector identified that the main issues in this appeal are:
- 1. Whether there is a 5-year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the directions for growth and the release of housing sites.*
  - 2. Whether granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy, having regard to the scale and distribution of development.*
- 7.2. These submissions address these issues in turn.

***Whether there is a 5-year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the directions for growth and the release of housing sites.***

The components of the five year supply – the requirement and the supply

#### The requirement

- 7.3. In determining whether there is a five year supply there are two components that need to be considered. Firstly, the requirement for the relevant period, taking into account the baseline housing requirement, historic shortfall and buffer, and secondly, the available supply as against that requirement. In

respect of the first component, namely the five year requirement it is agreed that:

- a. the relevant five year period is 2014/15 to 2018/19;
- b. the relevant five year requirement for that period is 5,062 houses or 1,012 dwellings per annum;
- c. it is therefore against the agreed figure of 5,062 houses that the available supply needs to be considered.

The available supply against which the requirement is to be measured is however disputed and it is to this matter that these submissions now turn.

### The supply

- 7.4. The National Planning Policy Framework (NPPF) provides guidance on how available supply should be assessed. It requires that the Council should ensure that its Local Plan, which in this case is the Core Strategy, meets its full objectively assessed needs for market and affordable housing in the housing market area and should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The footnote<sup>2</sup> to paragraph 47 states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable, with a realistic prospect that housing will be delivered on the site within five years, and in particular that development of a site is viable. Sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that the schemes will not be implemented within five years.
- 7.5. It is submitted that the approach to sites with planning permission in paragraph 47 needs to be read with common sense in respect of large sites that may take many years to build out. In those cases an assessment needs to be carried out, not just whether they have permission, but also whether they will deliver as projected over the five year period. This approach is consistent with the Planning Practice Guidance (PPG), referred to below, which provides guidance that the size of a site is an important factor in considering its deliverability within five years. This of course is in contrast to a small site which has planning permission which clearly should be capable of being built out over a five year period unless there is evidence to demonstrate that it will not be implemented.
- 7.6. Further guidance on how supply should be assessed is contained in the PPG. This guidance provides that:
  - a. This Council should have an identified five year housing supply "at all points during the plan period"<sup>3</sup>;
  - b. Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission

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<sup>2</sup> Footnote 11

<sup>3</sup> PPG ID 03-30



(outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years<sup>4</sup>;

- c. Planning permission or allocation is not a pre-requisite for a site being deliverable;<sup>5</sup>
- d. The Council “will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgments on deliverability are clearly and transparently set out”;
- e. If there are no significant constraints sites not allocated or without permission can be considered capable of being delivered within a five year time frame;
- f. The size of the sites “will also be an important factor in identifying whether a housing site is deliverable within the first five years”; in such cases the time taken to commence development on site and build out rates need to be considered to ensure a robust five year supply<sup>6</sup>.
- g. The deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption in a way that cannot be replicated in a section 78 appeal;
- h. As part of the requirement to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing the Council should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply<sup>8</sup>;
- i. The Council should take “a through approach on an annual basis” and if it does it will be “in a strong position to demonstrate a five year supply of sites”<sup>9</sup>;
- j. Demonstration of a five year supply “is a key material consideration when determining housing applications and appeals”<sup>10</sup>;
- k. It is also “central” to demonstrating that relevant policies for the supply of housing are up to date in applying the presumption in favour of sustainable development.

7.7. It is submitted that the above policy and guidance makes it clear that in reaching decisions on proposals for housing the need for the Council to be able to demonstrate a five year supply is central to that decision making process. Moreover the Council cannot merely assert a five year supply they must demonstrably have one. In short, the requirement within paragraph 47

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<sup>4</sup> PPG ID 03- 31

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> PPG ID03-33

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

of the NPPF, as expanded upon within the PPG, is for this Council to provide robust, up to date evidence to support the deliverability of sites relied upon for its five year supply.

- 7.8. The need for a Council to demonstrate a five year supply has been the subject of judicial consideration<sup>11</sup>. This recognises that the calculation of housing supply is not an exact science but requires a series of assumption and judgments to be made and exercised. It is in essence a planning judgment reached at the time on the evidence available. However, as explained by Mr Justice Lindblom<sup>12</sup> *“since the question has considerable significance for the application of government policy in the NPPF a robust calculation is essential. And in cases such as this, where the local planning authority’s ability to show a five year supply depends on several variables, any one of which could make a decisive difference to the outcome if an assumption or judgment contrary to the authority’s were accepted the need for clarity and precision will be vital”*.
- 7.9. It can be seen from the above that the High Court has made it clear that a “robust” calculation is not merely desirable but “essential” and the need for clarity and precision not merely an aspiration but “vital”. As a result the Council is required to demonstrate that the supply element of its five year requirement constitutes a robust calculation undertaken with clarity and precision.

#### The Core Strategy Inspector’s report

- 7.10. On any proper consideration, it is submitted that the Council’s assessment of its five year supply does not satisfy this requirement. The reasons for this are set out in detail below.
- 7.11. The Council largely, if not solely, rely for the purposes of demonstrating a five year supply of sites upon the Core Strategy Inspector’s conclusion contained in his report, dated June 2014, that “ the SHLAA provides robust evidence that the adoption of the Core Strategy would ensure that there is a five year (plus 20%) supply”<sup>13</sup>. This in part is based on his previous conclusion that “if the assumptions underpinning the SHLAA are reasonable then it demonstrates a robust basis for delivery in the short and medium term but only a just adequate supply over the whole plan period”<sup>14</sup>.
- 7.12. It is submitted that this reliance is misplaced for the following reasons.
- 7.13. Firstly, it should be noted that the Core Strategy Inspector appears to reach a conditional, not definitive, conclusion which is predicated on the potential of the assumptions in the SHLAA being reasonable. For reasons set out below in these submissions it can be seen that some of the assumptions in the SHLAA are not, as it turns out, reasonable in respect of some of the sites.

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<sup>11</sup> Bloor Homes-v-SSCLG [2014] EWHC 754 (Admin) per Mr J Lindblom paragraph 104; CD43

<sup>12</sup> Bloor Homes supra para 105; CD43

<sup>13</sup> CD4 para 44

<sup>14</sup> Walker App 7 para 89; CD4

- 7.14. Secondly, and in any event, the existence of a five year supply is his planning judgment of a snapshot of the five year supply based on his assessment of the position at that time in light of the evidence presented to him. It was agreed that this evidence comprised the November 2013 SHLAA<sup>15</sup>, the brief March 2014 update<sup>16</sup> and the Statements of Common Ground provided by promoters in relation to the small number of strategic allocations<sup>17</sup>. It was also agreed (and in any event can be seen from the Core Strategy Inspector's report) that he addressed the issue of the five year supply in a few short paragraphs in his report<sup>18</sup> based on that evidence. In these paragraphs he refers to the three MOD sites in general terms and more specifically to one, namely, the MOD Ensleigh site<sup>19</sup>. He considers the infrastructure issues relating to Bath Western Riverside but not the rate of achievable delivery on that site. No other sites in Bath are referred to in the housing supply section of his report. He refers to two sites in Keynsham, the Somerdale site and the K2 West site. It was agreed that nowhere in the report does he refer to the deliverability of the two Green Belt release sites to the east and south west of Keynsham over the next five year period. These sites are addressed in detail in another section of the report<sup>20</sup> but this is confined to considerations of the soundness of their release from the green belt not their deliverability over the next five years. The Somer Valley is considered in very general terms<sup>21</sup> and the contribution from windfalls is also considered<sup>22</sup>. Therefore it can be seen that other than the MOD sites, which are considered in very general terms, the other sites disputed by the Appellants are not considered at all in the report in terms of their deliverability as shown in the March 2014.
- 7.15. Mr Walker confirmed that no independent assessment of the viability of the sites in the March 2014 trajectory was provided to the Core Strategy examination, save that produced by BNP Paribas,<sup>23</sup> in relation to the Green Belt release sites.
- 7.16. Furthermore no independent market assessment was produced relating to how many units could realistically be provided in respect of the sites relied on per annum, nor any independent assessment of the lead in times to demonstrate that these sites would in fact be able to deliver as projected. No Gantt charts were provided by any stakeholders in respect of these sites setting out the time estimates for the planning process or for site preparation and construction or, where applicable, for marketing and sale of sites. Moreover the inquiry is told that no strong case<sup>24</sup> was made against the projections of supply put forward by the Council to the examination and it

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<sup>15</sup> CD19

<sup>16</sup> CD20/21

<sup>17</sup> CD4 para 90

<sup>18</sup> CD4 paras 89-99

<sup>19</sup> CD4 paras 91/92

<sup>20</sup> CD4 Issue 4

<sup>21</sup> CD4 para 97

<sup>22</sup> CD4 paras 97 and 98

<sup>23</sup> J Harbottle App 3

<sup>24</sup> Ian Jewson proof re Paulton App 2 page 8 para 4.1

would therefore appear that there was little testing of the supply evidence which was heard in half a day of examination time in contrast to the entire process which from submission to report took just over three years.

- 7.17. The March 2014 trajectory before the Core Strategy inspector showed a continued under-delivery of only 577 units as against the required five year average of 1,012 dpa in the first year (2014/15) of the five year supply. The average is projected as being met with 1,023 units in 2015/16 which was projected to increase to 1,597 units in 2016/17; reducing to 1,449 units in 2017/18 and to 1,287 in 2018/19. In all, the March 2014 trajectory shows a total of 5,933 units over the five year period from 2014/15 to 2018/19 and this is the figure referred to in the Core Strategy Inspector's report.
- 7.18. Therefore, at that time, based on the largely unchallenged evidence provided to him, the Core Strategy Inspector concluded that there was a five year supply of 5,933 units as against a requirement of 5,062 and a supply over the whole plan period of 13,160 units<sup>25</sup> as against a requirement of 13,000 units.

#### The subsequent trajectories

- 7.19. As required by the NPPF and the PPG, and as explained above, this trajectory was required to be robust, up to date, and transparent so that the Council is in a strong position to defend it, not least at this appeal. However nothing could be further from the actual position. When faced with this inquiry the Council produced two further trajectories, dated November 2014 and December 2014 respectively. The December 2014 trajectory was produced as part of the Council's evidence four weeks prior to the inquiry.
- 7.20. It is obvious that this is a materially different trajectory to that presented to the Core Strategy Inspector and represents structural changes to housing delivery over the same five year period to that placed before him.<sup>26</sup>
- 7.21. In particular the revised trajectory now shows under-delivery for the first two years, as opposed to the first year only, with housing delivery increasing to a figure of 1,701 units in the fourth year, a figure higher than that presented to the Core Strategy Inspector, but in respect of the same sites. This revised trajectory shows that by the third year there will now be 409 fewer dwellings to that presented to the Core Strategy Inspector with the delivery all "coming good" in the last two years of the five year period. The revised December 2014 trajectory now shows an annual level of delivery from the same sites materially over and above that presented to the Core Strategy Inspector.
- 7.22. These material revisions to the trajectory represent the continued back loading of delivery that has been a feature of this Council's five year supply where ever lower levels of housing are delivered in the first years of the five year supply with ever higher peaks of housing delivered at ever later years over the same period.

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<sup>25</sup> CD4 para 89 (CD12/21b is the March 2014 update contained in CD20/21

<sup>26</sup> J Harbottle proof Table 4

- 7.23. In essence the Council now rely on a materially different trajectory to that presented to the Core Strategy Inspector less than 9 months ago for the same period. Mr Walker accepted that these differences are "important to note". This is of course correct as it demonstrates that either the information presented to the Core Strategy was not robust or that there have been material changes that have occurred since that time. It is submitted that the reasons for this radical change in the trajectory over such a short period probably matter less than ensuring that the issue of the five year supply is properly scrutinised at this inquiry and on the basis of the evidence now available and in accordance with the policy and guidance set out in the NPPF and NPPG.
- 7.24. However the matter does not end with a materially altered trajectory. On the first day of the inquiry the Council conceded that three sites, Longacre, Brougham Hayes and Hartwells Garage, (amounting to 138 units) upon which they had relied four weeks earlier should no longer be contained in its five year supply. These sites were also in the March 2014 trajectory before the Core Strategy Inspector. Moreover, the matter did not end there either. During Mr Walker's cross-examination he was singularly unable to provide any reasoned defence of the revised trajectory and continued to make concessions in respect of other sites relied upon by the Council.
- 7.25. The Council's concessions, their implications and the evidence of Mr Harbottle are addressed in detail below. However before those detailed matters are turned to it is submitted that it is appropriate to make the following general points.
- 7.26. The Council's evidence on the five year supply is based on the December 2014 trajectory<sup>27</sup> and an update to the November 2013 SHLAA Findings Report<sup>28</sup>. It is submitted that how the one is derived from the other is vague at best, and generally, wholly unsupported by any concrete evidence. The Council's justification for its five year supply cannot be described in any way as meeting the requirements set out in the NPPF and PPG, set out above and which are characterised in judicial authority as being both essential and vital to ensuring a robust supply. In particular:
- a. Mr Walker accepted that no independent assessment had been undertaken in relation to viability or deliverability of any sites within the December 2014 trajectory.
  - b. Mr Walker also accepted that the Council did not present any evidence and had undertaken no analysis in relation to planning permission lead in times in respect of any of these sites. Instead, the Council's evidence in relation to times taken to achieve permissions was either wholly absent or, rather surprisingly, based upon vague ex post facto emails from developers.
  - c. Mr Walker also accepted that the Council did not present any evidence and had undertaken no analysis in relation to site preparation, construction periods or, where appropriate, marketing of sites for sale

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<sup>27</sup> Mr Walker App 1

<sup>28</sup> Mr Walker App 2

- d. Mr Walker's cross-examination demonstrated that the delivery of units over the five year period has been guessed at by Mr Walker and then retrospective justification sought for these guesses in emails from some of the developers of some of the sites which post-date the production of the December 2014 trajectory, on 18 December 2014, which had not been produced in evidence and which Mr Walker sought to read out for the first time in cross-examination; moreover it is clear, if it was not before, from the Engine Common decision<sup>29</sup> that estimates based on the say-so of developers, should be approached with a degree of circumspection. The Council has not done so with its revised trajectory and this became patently clear during Mr Walker's evidence.
- 7.27. The testing of Mr Walker's evidence revealed that the December 2014 housing trajectory is not based upon any systematic, thorough, robust or clear analysis of how and when each site is likely to come forward in terms of either the relevant planning process, site marketing where appropriate, site preparation and construction periods or the rate of delivery in the market place. Instead, the Council has made a number of general assumptions without any attempt to consider the realities of bringing forward the particular sites in the time frame contained in the December 2014 trajectory. The trajectory is a document without any proper justification, let alone robust justification, and the attempts by the Council to retrospectively justify the figures in cross-examination by reference to post-dated information seeking developers' approval of the council's figures was wholly unconvincing and contrary to both the spirit and letter of the relevant guidance.
- 7.28. On no proper consideration can the Council's trajectory be considered as either robust or calculated with clarity and precision. Moreover the approach taken by the Council, or lack of it, is in stark contrast to the careful, robust, fully evidenced, and transparent assessment undertaken by Mr Harbottle. He has substantial experience of the housing market in the South West and in this area in particular. He gave his evidence with authority and was able to justify the judgments he had made using evidence which was clear and transparent or his expertise which was fully explained. He made no concessions during the testing of his evidence as it was not necessary for him to do so, his evidence withstood proper scrutiny. The same cannot be said of Mr Walker. It is submitted that where there is a disagreement between Mr Walker and Mr Harbottle, it is clear that Mr Harbottle's evidence is to be preferred.

#### Recent decisions on five year supply and recent adoption of a Local Plan

- 7.29. Whilst much has been made of this by the Council it is irrelevant what role the Appellant did or did not play at the Examination into the Core Strategy in determining what is the correct approach to the five year supply at these s.78 appeals. Moreover for the reasons already explained above it is not open to the Council to merely point to the conclusion of the Core Strategy Inspector in order to claim a five year supply. It must be acceptable to challenge a 5-year land supply assessment at any time: when else might this be challenged? Each Inspector needs to reach and make his or her own

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<sup>29</sup> CD 44 para 24

judgment based on the evidence presented to them. This is wholly in line with the approach taken by Inspector Downes in the Lympne<sup>30</sup> decision. In that decision, whilst there was a recently adopted Core Strategy, she nevertheless considered both the requirement and supply components of the five year supply in order to assess whether the Council in that case did in fact have one, concluding that, despite recent adoption, it did not. Whilst this decision is the subject of a legal challenge<sup>31</sup> that does not seek to challenge her approach to assessing the five year supply in the light of a recent adopted Core Strategy, merely her finding that the requirement was 350dpa rather than 400dpa<sup>32</sup> and an issue related to which policies were relevant for the supply of housing and therefore out of date. It is therefore a challenge to her assessment of the evidence and interpretation of the Core Strategy policies not her approach to assessing the five year supply.

- 7.30. Further, the approach taken in Lympne accords with the Inspectorate's own approach to the determination of these appeals. In particular, the Inspectorate stated in its letter dated 13 August 2014 in agreeing to the conjoining of these appeals and in respect of the five year supply issue, *that "it is a central principle of the appeal process (and the law that underpins it) that each appeal is considered on its own circumstances and merits and on the basis of the evidence presented to the Inspector by the parties."*
- 7.31. A similar approach was taken by Inspector Graham in Fossey Gardens<sup>33</sup> which is a decision within the Council's area. In that case, the hearing took place before, but the decision was issued a week after, the adoption of the Council's Core Strategy. In that decision the Inspector concluded that there was no requirement for her to follow the Core Strategy Inspector's conclusion that there was a five year supply but that she would need clear and convincing evidence not to do so. No such evidence was provided to her by the Appellants in that case who merely re-issued their rather scant assessment of some of the sites relied upon by the Council which had already been provided to the Core Strategy Inspector<sup>34</sup>. Therefore in the Fossey Gardens case the Appellants argued immediately after the production of the Core Strategy Inspector's report before Inspector Graham that the Core Strategy Inspector's conclusion on the five year supply was wrong on the basis of the same limited evidence presented to the Core Strategy Inspector. In those circumstances it is wholly unsurprising that Inspector Graham accepted the Core Strategy Inspector's conclusion.
- 7.32. The Council produced two recent appeal decisions by Inspector Grindey which relate to two sites in Bishop Sutton, at Milford Head<sup>35</sup> and Ham Lane<sup>36</sup>, in which the conclusions reached are substantially the same. Whilst the approach taken by Inspector Grindey to the application of policy RA1 is relevant to the determination of these appeals, which we consider in further

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<sup>30</sup> CD 45 paragraphs 8-29.

<sup>31</sup> Under section 288 of the Town and Country Planning Act 1990

<sup>32</sup> CD45 para 10

<sup>33</sup> CD51 para 28

<sup>34</sup> Walker App 6

<sup>35</sup> APP/F0114/A/14/2218780

<sup>36</sup> APP/F0114/A/14/2217941

detail below, the Inspector's approach that there is a five year supply of housing land must be seen in the context that it was determined pursuant to the written representations procedure, that it is difficult to determine precisely what evidence the Inspector was presented with, but it would seem<sup>37</sup> that the Appellant did not challenge the Council's assertion that it had a five year supply, but instead relied on an assertion that the Core Strategy "made no difference"<sup>38</sup> to the five year supply position. On this basis, it is submitted that no weight can be attached to the Inspector's finding that the Council had a five year supply of housing land.

- 7.33. The situation before this inquiry is entirely different to Fossey Gardens, Milford Head and Ham Lane. At these appeals, substantial evidence has been produced to show that there is not a five year supply. Irrespective of whether the Core Strategy Inspector was right in concluding that there was a five year supply, (and Mr Harbottle considered that he was probably wrong), due to the effluxion of time, the now abandonment by the Council of the March 2014 trajectory before the Core Strategy Inspector, its replacement with a materially different trajectory, subsequent changes made by the Council even to that trajectory, the further concessions made by Mr Walker in evidence and the substantial, detailed and robust evidence provided by this Appellant clearly demonstrate that there is not now, if there ever was, a five year supply.
- 7.34. The Council has drawn attention to the Stafford Town<sup>39</sup> decision. It is submitted that this decision should be treated with caution as it is the subject of a legal challenge. In contrast to the Lympe decision referred to above, this does include a challenge to the approach taken by Inspector Manning to assessing the five year supply in the event of a recent adoption of a Local Plan and the interpretation he places upon the NPPF and NPPG on that matter<sup>40</sup>.
- 7.35. In Stafford Town Inspector Manning concluded that following the recent adoption of the Local Plan where the examining inspector had found a five year supply that "in the absence of truly compelling evidence to the contrary, it would not be for me to take an alternative view". It is submitted that the approach in Lympe is to be preferred to that taken in Stafford Town. Whilst of course there must be cognisance of the Core Strategy Inspector's conclusion as a material consideration of some weight an assessment on the basis of the evidence that exists now, still needs to be undertaken and ultimately is what informs a decision on the five year supply. It is submitted that the test contained in that decision of truly compelling evidence sets the bar too high and is not justified by the PPG. However, fortunately for the Appellants in this case it matters not which test is applied, irrespective of the

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<sup>37</sup> Milford Head decision para 6

<sup>38</sup> APP/F0114/A/14/2218780 at para 6

<sup>39</sup> Appeal Ref: APP/Y3245/A/14/2217578 paras 61-98

<sup>40</sup> Ground 2 paragraphs 50-55.5 provide the Claimant's explanation for why, if the Inspector's view was that an annual assessment should form some sort of presumption that the supply endured for the remainder of the year, this view is flawed.



position before the Core Strategy Inspector, there is now truly compelling evidence that justifies an alternative view to be taken.

- 7.36. It is contended that Inspector Manning's other conclusions in Stafford Town also need to be treated with caution. In particular, that it was "too early" to assess with any reliable degree of precision whether or not the Council was failing in its endeavour to maintain a five year supply by reference to the need for a "settling in period" and that "ad hoc reappraisals, by any party, outside the regular annual monitoring promoted by the Framework in the context of a plan-led system are not in my view encouraged or endorsed by PPG insofar as it continually emphasises annual monitoring in the context of plan-led supply". Furthermore his conclusions that following adoption of a Core Strategy that there is some sort of presumption that at any point in the forthcoming year pending review there will in reality be a five year supply should also be treated with some care. In particular his conclusion that "In short, in the period between adoption and the first annual post-adoption review of housing land availability in Stafford, at least, there can only sensibly be a working assumption that (unless something radical has happened to frustrate the planned-for delivery of housing, or there is compelling empirical evidence that, for example, it is unreasonable to expect the large sites relied upon to deliver at broadly the assumed rates in the circumstances of the relevant region or housing market are, over the relevant period) the anticipated trajectory holds good".
- 7.37. It is submitted, if Inspector Manning is suggesting that either it is not open to a decision maker to revisit the five year supply in the first year following adoption of a local plan or that there is a presumption that a five year supply exists for the first year following adoption of a Local Plan then that this is incorrect. Whilst of course the NPPF and the PPG states that the planning system is intended to be plan led, provides for annual monitoring of supply, and recognises that supply will be thoroughly considered at an examination that does not abrogate a Local Planning Authority from the need to have a five year supply at all times including when decisions on proposals are taken between annual assessments and that the need to have one is central to decision making. If the supply is robust they will have no difficulty in demonstrating that. If, as here, it is not, they will be unable to do so. They should not benefit from any sort of presumption. Moreover, even if there is some sort of presumption it has clearly been rebutted for the reasons set out in these submissions above and below. However, if in reality Inspector Manning is merely saying that the finding of a Core Strategy Inspector that there is a five year supply is a material consideration of weight, but if, (as is the case here), there is clear evidence, for whatever reason, that the previous conclusion can no longer hold good then the decision is not in fact any different from Lympe and Fossey Gardens.
- 7.38. Moreover it is to be noted that in the Stafford Town decision Inspector Manning did carry out an assessment of the five year supply on the evidence presented to him and did reach a conclusion that there was less supply available than found by the examining inspector although he concluded that a five year supply still existed. Furthermore it is submitted that even if Inspector Manning is applying some different approach to that taken in the earlier decisions, (of which he appeared to be unaware), it is clear that in this particular case and applying his own words, that "something radical has

happened to frustrate the planned for delivery” and there is “compelling empirical evidence” that sites will not deliver as planned.

- 7.39. Overall it is submitted that in respect of these three decisions that when properly analysed and in striving to interpret them in a way that is consistent that they are merely saying that at a section 78 appeal where the five year supply is in dispute an assessment needs to be undertaken taking into account all the available evidence which of course would include, but not be limited to, a previous finding of an examining inspector that one existed, that this finding carries weight but if there is clear evidence to demonstrate that the conclusion no longer holds good for whatever reason then the decision maker can find (an indeed must find) that there is not a five year supply.

#### The Council's December 2014 trajectory

- 7.40. These submissions now turn to consideration of the revised trajectory now relied upon by the Council. However before that is done it is submitted that it is important to note that Mr Walker accepted the following:
- a. The Council is a 20% authority as it has a record of persistent under-delivery of housing. This is demonstrated by the fact that the Council only met the 2007 Local Plan target between 2003 to the end of the plan period in 2011, once, and had failed to achieve its Local Plan's target by 15% or 1,062 houses by the end of the plan period in 2011<sup>41</sup>.
  - b. This failure to deliver on its targets has continued since commencement of the Core Strategy plan period in 2011 to the present and even on the Council's own case the Council is projected to continue to fail to do so until 2016/17.
  - c. Therefore over the last 14 years this Council has met its housing target only once.
  - d. In order to meet the Core Strategy housing requirements dynamic and structural changes are necessary to the way the Council delivers its housing supply.
- 7.41. Mr Walker also accepted that the stages that it was necessary to go through in order to deliver dwellings upon a site fell into two component parts. Firstly, the planning process stage, the various different steps for which are set out in Mr Harbottle's evidence<sup>42</sup> and applied by Mr Harbottle to each site, a process Mr Walker agreed was appropriate but which he had not undertaken. Secondly, the site preparation and construction stage, the various steps for which are set out in Mr Harbottle's evidence<sup>43</sup>, and applied by Mr Harbottle to each site, a process which Mr Walker also agreed was appropriate but which he had not undertaken.
- 7.42. It is submitted that it became very difficult for the Appellant to test in cross-examination the process undertaken by Mr Walker in order to arrive at his

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<sup>41</sup> Mr Harbottle evidence Fig 2 page 14 and Table 3 page 13

<sup>42</sup> See para 5.3.7 page 22

<sup>43</sup> See para 5.4.1 page 27

revised December 2014 trajectory because in reality no systematic process applying the various steps and stages, which Mr Walker agreed were necessary in order to carry out such an assessment, had in fact been undertaken. In short there was nothing to test because no systematic assessment had been carried out in order to arrive at the trajectory relied upon. The testing merely reveals that absence. This is important as it can reasonably be concluded that there is no real basis at all for the trajectory relied upon.

- 7.43. Mr Walker agreed with the periods of time taken previously by the Council to consider planning applications produced by Mr Harbottle<sup>44</sup>. His analysis shows significant time being taken to determine applications which are well below the national targets and averages and demonstrates a poor past performance by the Council in the time taken to make decisions. This past poor performance needs to be taken into account in considering the likely time taken in the planning process component of lead in times for the delivery of complex sites.
- 7.44. Mr Harbottle also explained that he has sought to ascertain and understand whether any additional resources or recruitment had been engaged by the Council to facilitate the structural changes needed to deliver its projected housing supply but the Council were unable to assist on this matter<sup>45</sup>. There can therefore be no confidence that the time taken to consider applications will reduce or that any measures have been put in place to improve poor past performance. The only response from the Council on this matter was that it had been invited to Downing Street due to the fact that it had one of the highest application rates for planning permission in the Country. However this does not address the serious points raised by Mr Harbottle. If anything it underlines them.
- 7.45. Mr Walker also agreed as appropriate starting points, the site preparation, construction periods and the timing of, and time taken for, marketing and sale of sites set out in Mr Harbottle's evidence<sup>46</sup> and also agreed with Mr Harbottle's evidence on open market sales rates of between 3-4 units per month plus the affordable housing element<sup>47</sup> for one site with one outlet.
- 7.46. Furthermore the above concessions and agreements, and the lack of any systematic, or indeed any, assessment to support its trajectory inevitably led Mr Walker to make a number of concessions when asked to consider Mr Harbottle's careful fully justified, site by site analysis. Indeed it is to be noted that Mr Harbottle's detailed assessment of each site was not challenged to any degree, if at all, in cross-examination. No real attempt was made in the Council's closing speech to defend the position taken by Mr Walker.
- 7.47. At the time of exchange of evidence the agreed five year housing requirement was and still remains 5,062 units. The differential on the level of supply as against that figure between the Council and the Appellant was at

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<sup>44</sup> Table 10 page 24 paras 5.3.11-5.3.13

<sup>45</sup> Mr Harbottle 4.6.4-4.6.6

<sup>46</sup> Table 12 page 28; para 5.5.2; 5.5.6-5.5.12

<sup>47</sup> Para 5.7.3-5.7.5 page 33

that time 5,945 units and 4,589 units respectively. However as already explained at the outset of the inquiry the Council changed its position on its supply figure and this change together with consideration of the disputed sites are considered below.

### The Conceded Sites

- 7.48. At the outset, Mr Walker conceded that three sites would no longer be contested by the Council. These sites are 2 Longacre, Brougham Hayes and Hartwells Garage. Combined, they amount to a total of 138 units, which it is submitted, is a material change to occur in four weeks. Therefore at the outset of the inquiry the Council's supply figure had reduced from 5,945 to 5,807 units as against the Appellants figure which has remained at 4,589 units.
- 7.49. It is submitted that it is telling that sites contained in the March 2014 trajectory placed before the Core Strategy Inspector as sites that would contribute to the five year supply are now accepted as not being able to make such a contribution. Whilst it is arguable that the situation in relation to Brougham Hayes has changed since that time as it is now proposed for student accommodation as opposed to residential, the situation in relation to the other two has not. It seems that the Core Strategy Inspector was misinformed about these two sites and they were never properly challenged or scrutinised.
- 7.50. This ties in with the submissions already made that in reality the focus at the examination in relation to supply, which for the reasons already explained was fairly limited in scope, only related to the three MOD sites and the green belt releases. The remainder of the sites relied upon do not feature at all in the Core Strategy Inspector's report and there is no evidence that these sites were meaningfully scrutinised. This also ties in with the comment made by the Council that there was no robust challenge to the supply relied on by the Council. This is important, it demonstrates that many of the sites which Mr Harbottle considers will not come forward were not previously tested in any significant way before the Core Strategy Inspector and this is the first time that this exercise has been undertaken.

### THE BATH SITES

#### Bath Western Riverside<sup>48</sup>

- 7.51. The evidence demonstrates that it took four years from the time of the application in 2006 to the grant of outline permission in 2010. Despite this very long period the site is now being developed by Crest and Mr Harbottle's view that Crest alone would develop this site was unchallenged.
- 7.52. Mr Harbottle has carried out a detailed assessment as to why he considers that this site will deliver 114 units less than shown in Mr Walker's December 2014 trajectory. Mr Walker was fairly cavalier about this difference saying that he considered that there was "not much difference really" between the 600 units projected to be completed by Mr Harbottle and the 700 projected

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<sup>48</sup> JH App 9

by BANES which only amounted to a 100 units difference overall. (The difference is in fact 114 dwellings when 582 is compared to 696). Moreover, Mr Walker's tacit acceptance that Mr Harbottle's projections were reasonable did not grapple at all with why Mr Harbottle considered a lower figure to be appropriate. Mr Walker had merely picked a figure without any justification, whereas Mr Harbottle had demonstrated that Mr Walker's figure was unsustainable when properly analysed. Clearly Mr Harbottle's figure is to be preferred and the reasons for this are set out below.

- 7.53. Mr Harbottle explained, and Mr Walker agreed, that the December 2014 trajectory<sup>49</sup> for this site shows that the maximum number of open market dwellings achieved on this site to date in a year is 95 units<sup>50</sup>. This represents 8 dwellings per month. When compared to the figure of 550 units which was the total number of houses achieved in that year in the whole of BANES<sup>51</sup> it can be seen that the 95 units represented 17% of that market. Mr Harbottle explained, and Mr Walker agreed that he was not in a position to dispute the view that these units were sold in a market vacuum and that the units on this site represented premium values at the top end of the Bath market. The sale of 8 units per month is well in excess of the 3-4 units which it is agreed represents a normal completion figure for a site being developed, as here, by a single developer. The December 2014 trajectory and Mr Harbottle's table<sup>52</sup> shows that for the years 2017/2018 and 2018/2019, that once the affordable housing element is removed from the Council's projected delivery, that open market completions of 176 units (14 dpm) and 146 units (12 dpm) respectively are projected to be achieved. This is substantially in excess of the level of units achieved previously on the same site in a marketing vacuum.
- 7.54. No objective evidential basis for the projection of such sales, which have never before been achieved from a site in Bath, the wider BANES area or indeed any of the other adjoining authorities, even at the height of a housing boon, is produced by the Council to justify these levels of delivery. Mr Harbottle explained that these rates of sales from one site with one developer were unprecedented and in his view undeliverable. He explained that Crest, would track demand, and that even when developing apartment blocks these would be designed to be built in phased blocks to limit the amount of unsold units at any given time given the massive financial implications to a developer of holding unsold stock. He explained the values of these units in the region of £700,000 rising to over £1.3m and it was unthinkable that Crest would build such stock at the projected levels. Mr Walker accepted that he was not in a position to dispute Mr Harbottle's view.
- 7.55. Against Mr Harbottle's detailed analysis backed up with his own professional expertise, is one highly generalised email, dated 19 December 2014, from Crest which post-dates the production of the December 2014 trajectory by the Council on 18 December 2014 and which vaguely endorses it. The email

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<sup>49</sup> Mr Walker's App 1

<sup>50</sup> Year 12/13 147-52 = 95

<sup>51</sup> J Harbottle proof page 15 Table 4

<sup>52</sup> JH9 Table 1

does not address the points raised by Mr Harbottle as to how in reality the market is going to withstand such an unprecedented level of delivery from one site by one developer in a premium value location.

- 7.56. Moreover, there has now been plenty of time for the Council to rebut the evidence of Mr Harbottle in respect of the ability to achieve this unprecedented level of completed units on this site either through evidence from Crest or others but it has not done so. Given that the Council has not been shy in producing information very late in the day the only logical conclusion is that it has not done so because it cannot.
- 7.57. It is therefore submitted that when the delivery of this site is properly analysed there is clear evidence that 114 units should be removed from the Council's trajectory in respect of it. As a result the Council's overall supply figure should be further reduced from 5,807 to 5,693 units.

#### MOD Foxhill<sup>53</sup>

- 7.58. It was Mr Harbottle's view<sup>54</sup> that this site is likely to deliver 20 units in January 2018, the last quarter of 2017/18, and would then deliver 80 units in the fifth year, giving rise to a total delivery of 100 units over the five year period. Mr Walker's December 2014 trajectory shows 71 units being delivered in the year 2016/17 increasing to 103 units for the following two years, giving rise to a total of 277 units for the same period. There is therefore a differential of 177 units between the two witnesses.
- 7.59. It is important to note that the Council's December 2014 trajectory shows a higher rate of delivery per annum than the March 2014 trajectory presented to the Core Strategy Inspector (71 as against 60 units for the first year and 103 as against 80 units for the last two years respectively)<sup>55</sup>. It is unclear what the evidential basis is for this increase. Mr Harbottle agreed that once this site is up and running, it is likely to deliver 80 units per year (including affordable housing) which was the rate of delivery presented to the Core Strategy Inspector<sup>56</sup> and is in accordance with the rates of delivery of 3-4 units per month from one outlet, agreed as appropriate by Mr Walker in cross-examination, once an allowance for affordable housing is made. The Council's new projection is in excess of these agreed figures and there is no, and certainly no adequate, explanation or evidence provided to justify the increase from 80-103 dwellings. It is submitted that the Council's original maximum level of 80 units per annum for this site is therefore to be preferred. For this reason alone it is appropriate to make a deduction of 46<sup>57</sup> units from the Council's trajectory for this site.
- 7.60. However the matter does not end there. The Council's trajectory (both the March and December versions) show this site delivering a substantial level of dwellings in the year 2016/17, in just over a year's time. Mr Harbottle's

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<sup>53</sup> JH App 11

<sup>54</sup> JH App 11 Table 1 page 1

<sup>55</sup> JH *ibid*

<sup>56</sup> JH App 11 paras 3.3.4-3.3.5

<sup>57</sup>  $(103 - 80) \times 2 = 43$  dwellings

evidence to the inquiry was that the Council's trajectory for this site was "not deliverable". This must be right. Once an allowance is made for 6 months site preparation followed by a 6 months construction period until the first unit is delivered it would mean that the development of this site would need to start in April 2015, namely, in a month's time (at the time of the inquiry). Clearly this is not achievable. The Council's projection is particularly absurd when it is considered that there is no grant of outline planning permission, no signed section 106 agreement and no approval of reserved matters for this site. The support by the developers, Curo, for the trajectory for this site, in their email to the Council, (which is one of the few emails to pre date the production of the December 2014 trajectory), needs to be seen in this light. Agreement by Curo for ever increasing rates of delivery must be treated with circumspection particularly when on proper analysis such rates are absurd. As Mr Harbottle explained, Curo are new to this type of development having recently established an open market arm of its affordable housing business and presently lack experience. In Mr Harbottle's view, Curo has substantially under-estimated the extent of the task it faces in terms of achieving an implementable consent and then delivering houses on this site. Indeed he considered that its lack experience would if anything increase rather than reduce the time likely to be taken. In any event the delivery trajectory supported by Curo cannot on any rational analysis be achieved.

- 7.61. Moreover whilst there is now a resolution to grant outline planning permission for the currently proposed mixed use scheme, despite acknowledged harm to the World Heritage Site (WHS) and English Heritage remaining very concerned in respect of the impact of the scheme from some of the most iconic viewpoints within the WHS, there is still some way to go before an implementable consent is achieved. The scheme, given the impact on the WHS, may be called in by the Secretary of State and an inquiry held into its merits. Even if it is not, a section 106 agreement still needs to be both agreed and signed before an outline permission can be granted and then a reserved matters application worked up and considered by the Council. Given the sensitivities of this site within the WHS the reserved matters stage is likely to be controversial and complex. It is unsurprising therefore that Mr Harbottle concluded that "for that reason alone" the site will not deliver in 2016/17.
- 7.62. In light of the above it is submitted that it is unarguable that an implementable consent will be in place to allow site preparation to commence in two months' time. Mr Walker conceded that his projections "could go down to 200 to allow for delays". No evidence was given as to why the delivery figure would reduce to 200 units rather than the 100 units contained in Mr Harbottle's analysis. It is submitted that this is again merely an unsubstantiated guess by Mr Walker having rightly recognised that an allowance needs to be made for the planning process to run its course. What it does reveal though is that Mr Walker conceded, as indeed he had to, that a material reduction to the 277 units relied upon by the Council in its December 2014 trajectory for this site should be made.
- 7.63. However Mr Walker's conceded reduction of 77 units to enable the planning process to deliver an implementable consent to enable a start on site, does not make any allowance for the fact that the level of delivery once the site gets going is also inflated for the unchallenged reasons given by Mr Harbottle

and which are explained above. Therefore it is also appropriate to make a further reduction of at least 43 units to take account of that inflation. When a reduction of 77 units and 43 units are combined the actual differential between Mr Walker and Mr Harbottle in respect of this site is in fact 157 and 100 units respectively. Given that Mr Walker's reduction of 77 units is not, unlike Mr Harbottle's figure, based on any systematic assessment but merely represents a guess it is suggested that Mr Harbottle's figure should be preferred.

- 7.64. Either way, the total supply figure relied upon by the Council should be further reduced by somewhere between 120 or 177 units. This reduces the Council's total supply figure from 5,693 to between 5,573 or 5,516 units for the five year period.

MOD Warminster<sup>58</sup>

- 7.65. The background to the consideration of this site by the Council is of some concern. The concept statement for this site was produced in September 2012 after which pre-application discussions took place in 2013 with an application eventually being made in June 2014. It therefore took 2 years to get to the submission of an application stage for this site.
- 7.66. At the time of exchange of evidence the officer's report to committee, dated December 2014, contained six reasons why the application was recommended for refusal. English Heritage and the Bath Preservation Trust objected to this scheme. The recommendation was on the basis that the proposal:
- a. Would neither preserve or enhance the Bath Conservation Area and would compromise the Outstanding Universal Values and authenticity of the WHS;
  - b. Would unacceptably intrude into the wider undeveloped land and the setting of the canal corridor causing unacceptable landscape harm and harm views within and into the Conservation Area and the setting of the WHS;
  - c. Would result in unacceptable tree loss and provided inadequate tree replacement;
  - d. Provided inadequate details re drainage;
  - e. Would have an unacceptable impact on the amenity of existing residents;
  - f. Would make inadequate provision for affordable housing.
- 7.67. However since the officer's report was first prepared, just over a month later, a further report has been produced recommending that permission should in fact be granted. The Appellant is unable to question the officer who wrote this revised report as he has now left the Council<sup>59</sup>. This is an extraordinary

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<sup>58</sup> JH App 12

<sup>59</sup> Mr Daniel Stone



change in position given that whilst the issues relating to affordable housing and flooding have been resolved and despite some amendments to the scheme the Council's conservation, design, landscape and arboricultural officers retain their objections to the scheme as do English Heritage and the Bath Preservation Trust and that the impact of the scheme on residential amenity is not resolved. A resolution to grant permission for this site has now been made. It is submitted that this *volte face* is largely to do with the Council's concerns over its five year supply references which loom large in the revised report. This of course is not surprising given the position the Council is in concerning the five year supply when it is properly analysed.

- 7.68. It is submitted that there is every likelihood that this application will be called in by the Secretary of State given the continuing objections from English Heritage, the Bath Preservation Trust and the Council's own conservation officers and the *volte face* made in respect of the acceptability of this proposal by planning officers. Be that as it may it is submitted that even if it is not, there is still a long way to go before an implementable consent is achieved which includes the need for a signed section 106 agreement, grant of outline planning permission and approval of reserved matters which is likely to prove controversial to say the least. Moreover, as Mr Harbottle explained, the promoters of this site, Square Bay, are not developers and time needs to be factored in to sell the site to a developer. It is submitted that in this case this is likely to be sequential to the approval of reserved matters which, given the conservation controversy the site has generated, will need to be resolved prior to such a sale.
- 7.69. Therefore irrespective of the present resolution to grant an outline planning permission this site can at best perform no better in terms of delivery than the MOD Foxhill site which is in a similar position. Indeed given the need to sell this site, which is not the case with MOD Foxhill, it is likely to perform worse in terms of its delivery.
- 7.70. In light of the above it can be seen that the March 2014 trajectory placed before the Core Strategy examining Inspector was always wholly unrealistic<sup>60</sup>. This provides that delivery of units would start to occur in October 2015. Taking into account the need to make an allowance for 12 months for site preparation and construction of units an implementable consent would need to have been in place by October 2014, four months ago, to allow this to happen. This of course makes no allowance for the time needed to sell the site to a developer, which Mr Harbottle explained, and which Mr Walker was not in a position to dispute, takes at least 6 months. To date there is no grant of outline permission, no approval of reserved matters and no sale of the site. All this is yet to be achieved.
- 7.71. Therefore given the fact that the situation on this site is similar to the situation with MOD Foxhill, and even on the assumption that there is no call in of this application, (which it is submitted in this particular instance is a big one), similar delivery rates should be applied to this site as was applied to the MOD Foxhill, but with an additional allowance for the sale of the site which does not apply to MOD Foxhill. When Mr Harbottle's two tables for the

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<sup>60</sup> JH App 12 Table 1

delivery of these sites are compared<sup>61</sup> it is submitted that the reality is that MOD Warminster is unlikely to deliver more than the 48 units suggested by Mr Harbottle.

- 7.72. In any event, on proper analysis, it is clear that the Council's December 2014 trajectory is far closer to what in reality is likely to occur than the March 2014 trajectory presented to the Core Strategy Inspector. The December 2014 trajectory shows that the differential between Mr Walker and Mr Harbottle in respect of the likely supply from this site is 75 and 48 units respectively – a differential of 27 units<sup>62</sup>. It is submitted that Mr Harbottle's assessment is to be preferred, the Council's total supply should further reduce by 27 units from between 5,573 and 5,516 to between 5,546 and 5,489.

#### Englishcombe Lane<sup>63</sup>

- 7.73. The December 2014 trajectory shows this site as delivering 40 units in the five period. It is Mr Harbottle's view that no units should be counted from this site. This site was allocated in the 2007 Local Plan to deliver 45 units but despite its allocation has failed to deliver any housing over the last seven years. No application for planning permission for residential development has ever been made in respect of it. The majority of the land is owned by the Council and therefore there is a legal requirement on the Council to achieve best value for it. Furthermore there is a particular difficulty with this site in that third party land is required to achieve means of access to it and therefore a potential ransom exists over the land which will inevitably affect its value and negotiations relating to it. Whilst Mr Walker suggested that there was an agreement between the proposed developer and the third party concerning access to the site he agreed that the outstanding negotiations for the sale of this site by the Council to the developer were "not resolved". Indeed Mr Harbottle explained that he had been told by the developer involved in these negotiations that they were a "nightmare". Moreover, there is no timetable in respect of the completion of these negotiations and no indication from those involved in the negotiations on either side that they will in fact ever be completed. The email from the Developers merely states that they are awaiting a decision from the Council and had been told "informally that the offer is looking favourable". It is submitted that none of this inspires confidence that a deal will actually be done on this land. It is clear that currently the site is not "available now" as required under footnote 11 to paragraph 47 of the NPPF. As the site cannot be considered "available now" it is not deliverable and should not be included within the five year trajectory. Therefore the 40 units should be removed from the projected supply. This further reduces the Council's supply from between 5,546 and 5,489 to between 5,506 and 5,449.

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<sup>61</sup> JH App 11 Table 1 & JH App 12 table 1

<sup>62</sup> *Ibid* Table 1

<sup>63</sup> JH App 13

### King George's Road<sup>64</sup>

- 7.74. This site is shown in the December 2014 trajectory as delivering 21 units within the five year period. Mr Harbottle considers the site should be discounted. This comprises vacant land last used as allotments. There is a deficit of 1.9h in allotment provision in this part of Bath and a deficit of 2.6h if the surrounding wards are also considered<sup>65</sup>. This will worsen when more housing is delivered in Bath. As vacant land last used for allotments the site is protected under saved policy CF8. This prevents development of this site for an alternative use unless replacement allotment provision is made. There is presently no replacement provision. Indeed the Council has recently refused permission to develop this site for housing which was upheld on appeal in part due to the allotment issue.
- 7.75. The email from the potential developer of this site to Mr Walker<sup>66</sup> in response to his question concerning the possibility of securing replacement allotment land and whether the developer will "wash its hand of the site" states unsurprisingly "We are looking for allotment sites in collaboration with Property Services and Parks – it is not, as you might imagine an easy task! That's all I can offer you at present". It is submitted that no comfort can be gained from this email that replacement land is likely to be found to enable the release of this site or that the developer will not indeed wash its hands of the site.
- 7.76. In short it can be seen that this site is not available now due to the policy protection in place for the land as allotment land. It should not therefore be in the five year trajectory. Mr Walker stated that he would "take it out [of the trajectory] as not being deliverable if we are still here next year". This is an untenable position. If the need to protect the site as allotment land makes the site undeliverable next year, there can be no proper basis for finding that the site is a deliverable one this year. The site is presently neither available or suitable. Clearly it should be removed from the Council's trajectory. In fact it should never have been in it. This further reduces the Council's five year supply from between 5,506 and 5,449 units to between 5,485 to 5,428 units.

### Roseberry Place<sup>67</sup>

- 7.77. The Council's March 2014 trajectory for this site before the Core Strategy Inspector showed it delivering 60 units in 2016/17 and therefore housing completions commencing in April 2016, giving rise to a total figure of 170 units by the end of the five year period. By December 2014 the projected 60 units had already slipped to 45 units with completions having slipped from April to July 2016. A reduction from 170 to 150 units within the five year period.

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<sup>64</sup> JH App 15

<sup>65</sup> JH15 App 1 page 2

<sup>66</sup> See email dated 8 January 2015

<sup>67</sup> JH App 17

- 7.78. However as Mr Harbottle explained neither of these projections are realistic. In his view this site is only likely to deliver about 45 units in the last year of the five year supply when the planning process, marketing of the site and site preparation and construction periods are properly considered. This represents a difference between Mr Walker and Mr Harbottle of 105 units. Indeed for housing delivery to commence in July 2016, as now suggested by Mr Walker, taking into account a 12 month allowance for site preparation and construction an implementable consent would need to be in place by July 2015, in five months' time (at the time of the inquiry). Clearly this is wholly unrealistic. The as yet unsigned planning performance agreement for this site shows the target date for the grant of an outline planning permission as being in the middle of August 2015, a month after site preparation would need to commence following an implementable consent. Even if this target for outline permission were to be achieved, and the Council's track record of granting outline permission would suggest it is unlikely to be, further time needs to be allowed for marketing and sale of the site to a residential developer, application for, and approval of, reserved matters, site preparation and construction. All these essential component stages have been ignored by the Council and further demonstrate the lack of credibility of its December 2014 trajectory for this site.
- 7.79. Moreover the email from the planning agent involved with this site, which post-dates the December 2014 trajectory, is vague and unclear but significantly does not endorse the Council's December 2014 trajectory for the site. Moreover its assumption of an implementable consent in September 2015 given that an outline permission is not anticipated even by the Council until August 2015, a month earlier, is untenable.
- 7.80. As the site is not owned by residential developers 6 months needs to be factored in to the overall process for its marketing and sale. As Mr Walker has not undertaken any systematic analysis of the time likely to be needed for the planning process, the sale of the site and for site preparation and construction of units it was perhaps unsurprising that in cross-examination he stated that he was "not too sure where to place the site precisely within the 5 years" but that the development will "happen somehow in the next 4 years". These vague and extraordinary comments are in stark contrast to Mr Harbottle's clear and reasoned evidence as to why the site is likely to deliver some dwellings within the period but not before 2018/19. It is submitted that when faced in cross-examination with the need to factor in appropriate lead in times for the planning, site marketing and sale and site preparation and construction, Mr Walker was wholly unable to justify his trajectory hence his unhelpful and vague answers. It is also submitted that it is absolutely clear that Mr Harbottle's considered trajectory should be preferred. As a result the Council's total supply figure should be further reduced by 105 units from between 5,485 to 5,428 units to between 5,380 to 5,323 units.

#### Bath Press<sup>68</sup>

- 7.81. Mr Walker's December 2014 trajectory shows this site delivering 100 units over the last two years of the five year period whereas Mr Harbottle considers

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<sup>68</sup> JH App 18

that this site should not be included at all<sup>69</sup>. Whilst this site is in the November 2013 SHLAA, its inclusion in the December 2014 trajectory is in stark contrast to its absence from the March 2014 trajectory, as it was not relied upon by the Council before the Core Strategy Inspector due to 'uncertainty'<sup>70</sup>, a position confirmed by Mr Walker<sup>71</sup>. It is submitted that this was and remains the correct assessment of this site. The situation has not materially altered in relation to this site since March 2014 when the Council considered it to be too uncertain to be properly considered as deliverable. The site is a disused former print works. Mr Harbottle explained that it is a complex site that gives rise, at the very least, to contamination and heritage issues. The most recent application for the site for a food-led development was refused on appeal.<sup>72</sup> Moreover, Mr Harbottle explained that presently the site is controlled by Tesco which is considering the future strategy for the site and it is not being actively marketed. There is neither an extant residential permission for the site nor any current application for residential use upon it. Since the dismissal of the food led development on appeal the Council has had pre-application discussions and received an EIA scoping request which makes reference to a mixed use development. However, this is plainly insufficient to remove the significant uncertainty surrounding this site so as to allow it to form part of the five year supply and is wholly insufficient to make what the Council recognised in March 2014 as an uncertain site, certain. As a result the Council's total supply figure should be further reduced by 100 units between 5,380 to 5,323 units to 5,280 to 5,223 units.

#### Land at Odd Down<sup>73</sup>

- 7.82. This is one of the green belt release sites, which is due to deliver a total of 300 units within the Core Strategy period and is allocated under policy BS4 of that plan. Mr Walker's trajectory shows this site delivering a total of 130 units within the five year period with 20 units between October 2016 and April 2017, and a delivery rate of 55 units for the fourth and fifth year. This is a change to the March 2014 trajectory in which the Core Strategy Inspector was told that 150 units, 20 more units, would be delivered from this site in the next five years based at a rate no higher than 50 units per year i.e. 5 units less than presently shown. Therefore whilst the Council's overall numbers for this site have gone down their delivery rate has gone up. There is no evidence produced to explain that change. In any event Mr Harbottle considers that both projections are incorrect and that only 36 units will be delivered from this site in the last year of the five year period<sup>74</sup>: a difference of 94 units.
- 7.83. One of the issues with this site is that the Core Strategy policy allocating this site requires that a Master Plan and Landscape and Ecological Mitigation Strategy must be agreed by the Council before an application can be made.

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<sup>69</sup> JH App 18 Table 1 page 1

<sup>70</sup> JH App 18 flag 3 page 74

<sup>71</sup> See JH App 18 para 1.5.1

<sup>72</sup> 12/01999/EFUL appeal dismissed December 2013 (See JH App 18 para 1.4.1)

<sup>73</sup> JH App 19

<sup>74</sup> JH App 19 Table 1 page 1

Presently the Master Plan is anticipated to be submitted to the Council in March 2015<sup>75</sup>. It will then have to go through a process of approval before an application can be submitted. It is wholly unsurprising that the email dated 22 January 2015 from Bloor Homes, the promoters of this site, which post-dates the production of the December 2014 trajectory, states that *"the requirement for a comprehensive master plan developed through public consultation prior to the submission of a planning application has added considerably to the timescales of the planning process. We are currently engaged in community workshops which are part of this comprehensive master planning process"*.

- 7.84. In the Statement of Common Ground<sup>76</sup> before the Core Strategy Inspector it is noted that an application for outline permission would be made for this site in June 2014 and an implementable consent would be in place by November 2014. As of now, in February 2015, no master plan is agreed, no planning application has been made and one is not now anticipated until Q2 2015 (July to September 2015).
- 7.85. At least the landowners, despite their wildly inaccurate assumptions in the Statement of Common Ground in respect of the planning process had anticipated that there would need to be an 18 month period from the time an implementable consent was obtained to the time of delivery of the first units. This at least appears reasonable and is in accordance with Mr Harbottle's own evidence on the time taken for that part of the lead in process.
- 7.86. Given that the Core Strategy Inspector was told that an implementable consent would be in place for this site in November 2014 the evidence clearly demonstrates that he was either significantly misinformed about the likely progress of this site or that it has been substantially delayed since he considered the matter. Either way the situation in respect of this site is now very different to what the Core Strategy Inspector was told.
- 7.87. The Council's present trajectory for this site means that delivery of units would need to start in October 2016. Given that the promoters of this site have stated that an 18 month site preparation and construction period is appropriate and seems reasonable, an implementable consent would need to be in place by May 2015, in three months' time. Clearly that is wholly unachievable as a master plan is not agreed and an application for outline permission, let alone for approval of reserved matters, is not expected until July 2015 at the earliest. Clearly the Council's projection is absurd in light of the above.
- 7.88. Mr Walker admitted that "some further calming might be necessary" for this site and agreed that he "would now say, take 12 months rather than 6 months of delivery out of the trajectory, 130 down to 100", thus reducing the number of available dwellings within the 5 year period by a further 30 dwellings. There is therefore a clear acceptance by him that the December 2014 trajectory is wrong which inevitably also means that the March 2014 trajectory was wrong. Moreover it can be seen from the above analysis that

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<sup>75</sup> Walker App 2 page 19

<sup>76</sup> JH App 19 flag 2 para 3.2

his “further calming” does not go anywhere near far enough to reflect the true position. Once a reasonable period of time has been allowed to agreed the master plan; to obtain an implementable consent and to allow for site preparation and construction it is clear that Mr Harbottle’s trajectory is wholly reasonable and to be preferred.

- 7.89. The Council’s December 2014 trajectory does not withstand scrutiny as it is not based on any sensible, reasonable or systematic analysis. It is no more than a very bad guess. As a result the Council’s total supply figure should be further reduced by 94 units from between 5,280 to 5,223 units to 5,186 to 5,129 units.

### KEYNSHAM SITES

#### Fire Station and Riverside<sup>77</sup>

- 7.90. The Council’s December 2014 trajectory shows this site as delivering 90 units over the five year period. Mr Harbottle considers that this site should not be included in the trajectory as it is not ‘available now’. It is a five storey 1970s complex<sup>78</sup> containing office space, retail units, a leisure centre and fire station. It has a number of existing tenancies and uses. At the first set of hearings before the Core Strategy Inspector in 2012 the Council did not rely on this site for the five year supply because negotiations with the long leaseholder, Topland, were ongoing and stated that there would be an update when the negotiations were complete<sup>79</sup>.
- 7.91. The site was included in the November 2013 trajectory<sup>80</sup> and the March and December 2014 trajectories<sup>81</sup>. In the November 2013 SHLAA the site is described as owned by BANES and there is no mention of any other interests.
- 7.92. The Core Strategy Inspector could therefore be forgiven for concluding that given the omission of any reference to other interests and the inclusion of the site within the trajectory, the negotiations with the long leaseholder referred to in 2012 had been successfully concluded.
- 7.93. However that is not the case. Indeed the position in respect of the long leaseholder has not changed other than Topland has now gone into liquidation and Mr Harbottle said that it was now in the hands of administrators KPMG. There is no mention of this site in the updated Findings Report<sup>82</sup> produced by the Council to the inquiry. Mr Walker seemed to be confused as to who held the long lease and thought it was Arlington. Either way it matters not. The position remains as in 2012. This site has existing tenancies and uses upon it. Whilst the Council owns the freehold reversion, the site is subject to a long lease in favour of a third party. No agreement has been reached with the Council in respect of this long lease,

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<sup>77</sup> JH App 20

<sup>78</sup> JH App 20 photos page 1

<sup>79</sup> JH App 20 Flag 2 page 4 para 7.3.9-7.3.11

<sup>80</sup> CD19 site K4

<sup>81</sup> JH App 20 Table 1

<sup>82</sup> Walker App 2

and this site cannot be considered as available for the purposes of NPPF 47<sup>83</sup>. As a result the Council's total supply figure should be further reduced by 90 units from between 5,186 to 5,129 units to between 5,096 to 5,039.

#### East of Keynsham<sup>84</sup>

- 7.94. This is a green belt release site that is allocated in the Core Strategy under policy KE3A<sup>85</sup> to deliver 250 units over the Core Strategy period. Mr Walker's December 2014 trajectory shows this site delivering 125 units, (5 units less than the March 2014 trajectory), with delivery of 25 units commencing in October 2016, followed by 50 units in each of the subsequent two years. Mr Harbottle considers that this site will deliver no more than 51 units in the five year period<sup>86</sup>. A difference of 74 units.
- 7.95. The Statement of Common Ground before the Core Strategy Inspector stated that the promoters "do not accept the SHLAA [i.e. the March 2014 trajectory] in advance of any detailed and agreed Master Plan"<sup>87</sup> and only, in any event control, part of the site<sup>88</sup>. To date no agreed Master Plan exists. Moreover the email trail referred to in cross-examination by Mr Walker and subsequently produced by him demonstrates that the Council has yet to agree the traffic modelling scoping note provided to the Council on 14 November 2014. This work is critical to informing the Master Plan and subsequent planning application.
- 7.96. Mr Walker's trajectory assumes that an implementable consent will exist in October 2015 to enable site preparation and construction to take place to deliver the projected 25 units between October 2016 and April 2017. However to date, a screening opinion has been requested but no response has yet been given by the Council, no application for planning permission has been made, no planning performance agreement entered into and, as with the Odd Down site referred to above, there is a need for a Master Plan to be consulted upon and agreed by the Council before an application can even be made. As explained the scoping of the transport modelling to inform that has still not been agreed by the Council let alone the output of any work that may follow that.
- 7.97. In light of the above it is untenable to reasonably suggest that a Master Plan will be consulted upon and agreed, an application for outline permission made and granted, together with a signed section 106 obligation agreed, and an application for approval of reserved matters made and granted, in 7 months, namely, by October 2015.
- 7.98. Moreover it became clear in cross-examination that Mr Walker's trajectory was based upon the understanding that the promoters of the site, Mactaggert and Mickel, were residential developers and would build the site out. As Mr

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<sup>83</sup> See *Wainhomes Holdings Ltd* [2013] EWHC 597 (Admin), Stuart-Smith J para 34

<sup>84</sup> JH App 21

<sup>85</sup> CD 3 page 67

<sup>86</sup> JH App 21 Table 1

<sup>87</sup> JH App 21 flag 1 para 3.7

<sup>88</sup> *Ibid* para 3.5



Harbottle explained to the inquiry, this is wrong. Mactaggert and Mickel are residential developers but only in Scotland. In the remainder of the UK they have a strategic land business where they promote land and then sell on consented sites. Accordingly, in line with Mr Walker's agreement that six months should be allowed for sale and marketing of a site to a house builder, Mr Walker's trajectory should, on this concession alone, be put back by 6 months i.e. reduced by 25 units. However that does not accommodate the ludicrously short period allowed for by Mr Walker to obtain an implementable consent so further reductions and delays are also appropriate.

- 7.99. It is submitted that allowing for a realistic timetable to agree the Master Plan then prepare, consider and grant outline and reserved matters applications, obtain agreement of all the landowners for a section 106 obligation, allow a period to sell the site together with a 12 month period for site preparation and construction,<sup>89</sup> the site is likely to achieve completions in 2018/19, as set out in Mr Harbottle's trajectory, but not before. As a result the Council's total supply figure should be further reduced by 74 units from between 5,096 to 5,039 to 5022, to 4,965 units.
- 7.100. It can therefore be seen that once the first 13 sites are properly analysed and considered the Council has fallen below its five year requirement of 5,062 units. However there are five other sites that also, when properly assessed, reduce that supply figure further still.

#### South West of Keynsham<sup>90</sup>

- 7.101. As with the East of Keynsham and Odd Down sites, this is a green belt release allocated in the Core Strategy<sup>91</sup> under policy KE4 to deliver 200 units over the plan period. Mr Walker's December 2014 trajectory shows this site delivering 25 units between October 2016 and April 2017 with a further 50 units in each of the two subsequent years: a total of 125 units. This is materially different to the March 2014 trajectory which shows 60 units being delivered from April 2016 and for each of the two subsequent years: a total of 180 units. The trajectory for this site has therefore reduced by 55 units in 7 months. Mr Harbottle does not consider that this site will deliver any units over the five year period. There is therefore a difference between Mr Walker and Mr Harbottle of 125 units.
- 7.102. As we have already explained above it can be seen from the Core Strategy Inspector's report, that in relation to the Green Belt releases, he focused on whether the removal of the land from the Green Belt was justified and sound, rather than the deliverability of the green belt releases over the five year period. It is submitted that the change to the trajectory 7 months later in respect of this site further reinforces that point. It also demonstrates the lack of rigour in the trajectory placed before the Core Strategy Inspector. It is also clear that the amendment to the trajectory does not go anywhere near far enough and the Council's trajectory for this site remains untenable.

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<sup>89</sup> A time period agreed as reasonable by RW in cross examination on day 1, proposed by JH and in line with the BNP Paribas report prepared for BANES (JH App 3)

<sup>90</sup> JH App 22

<sup>91</sup> CD 3 page 70-71

- 7.103. The Core Strategy Inspector was incorrectly informed that the site was wholly in the control of one developer<sup>92</sup>. It is not. It is in fact promoted by two developers, Bloor and Persimmon, who control different parts of the site. Due to the fact that there are two developers on this site, as explained by Mr Harbottle, there will need to be an equalisation agreement as between the two developers which is likely to further delay the progress of this site. Also the developers will need to exercise their option agreements which as Mr Harbottle also explained takes time where land values have to be either agreed or arbitrated.
- 7.104. Therefore there is a need for an equalisation, agreement of values and agreement upon a comprehensive Masterplan as between the two developers and the landowners. These are additional and important factors that are not present in respect of the other two green belt releases already referred to and which Mr Harbottle considers can make some contribution in the last year of the five year supply.
- 7.105. The fact that a comprehensive Master Plan for the whole site must be agreed by two developers before an application for any part of it can be submitted is likely to increase rather than reduce the time taken in respect of the lead time relating to the planning process component of this site. An equalisation agreement will also add further to this as will the need to agree values before options can be exercised.
- 7.106. Furthermore, the email trail placed before the inquiry by Mr Walker indicates that the Council are having to remind Bloor Homes of a need for an agreed comprehensive Master Plan by both developers not least because of the highways implications of the development of the site. The email trail further indicates that these matters are far from agreed as between either the two developers or the Council. Indeed the final email dated 27 November 2014 indicates that the promotion of the site by Bloor Homes is not currently being proposed in a comprehensive way and the Council's Transportation Planning Team Leader has further reminded Bloor of that need. Presently the emails trails show that even the approach to the provision of information that will inform a Master Plan is not agreed.
- 7.107. The need for a comprehensive Masterplan to be negotiated between the developers prior to any planning application is demonstrated in one of the emails produced by Mr Walker from the Council to Bloor which states *"I would remind you and Jeff Richards that the Core Strategy policy requires that a comprehensive Masterplan is prepared for the site, through consultation, and agreed by the Council...The intention is that the Masterplan will be reviewed through the Council's Development Team before being considered by the Development Control Committee. It will then help guide and form a framework for subsequent planning applications ..... it is suggested that the transport assessment work should be taken forwards as part of a, and in*

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<sup>92</sup> JH App 22 para 1.5.3; Flag 1 para 3.2

*order to inform the preparation of, a Masterplan relating to the **whole**<sup>93</sup> of the allocated site."*<sup>94</sup>.

- 7.108. Overall the email trails produced by Mr Walker show that the site is at a very early stage of its development and is not being planned comprehensively by the two developers hence the need by the Council to tell them to do so in light of the policy requirements for a comprehensive agreed and consulted upon master plan before any application can be made that is properly informed by comprehensive and jointly prepared or agreed transport assessments.
- 7.109. Mr Walker's December 2014 trajectory requires an implementable consent to be in place by October 2015 to enable site preparation works and construction to take place to deliver 25 units between October 2016 and April 2017. Mr Harbottle gave evidence to the inquiry that one of the developers, Persimmon, has indicated that they anticipate submitting a planning application towards the end of 2015<sup>95</sup>, in November 2015, one month after Mr Walker's trajectory requires the developer to start on site. Clearly this is impossible.
- 7.110. It can also be seen from the email trail produced by the Council which relates to Bloor that there is no timeline for the submission by Bloor of a planning application. Indeed given the uncertainty surrounding agreement over the Masterplan this is not surprising. There is no indication at all of when a planning application might be submitted by Bloor let alone when the site might actually be delivered. The email merely asserts that a pre-application submission will be made to the Council. This will serve little, if any purpose, until an agreed Masterplan is produced.
- 7.111. It is submitted that in light of the above an implementable consent will not be in place by October 2015 as required by Mr Walker's trajectory. Mr Harbottle's evidence takes into account the specific constraints of this site in relation to access, the requirement for negotiations between different landowners and house builders, the exercise of two option agreements and the requirement for an agreed comprehensive Masterplan, together with realistic timescales for preparation, consideration and grant of outline permission, approval of reserved matters as well as for site preparation and s.106 negotiations. His conclusion in light of these matters is that the site is unlikely to deliver any units within the five year period<sup>96</sup>. It is submitted that the clear and reasoned approach of Mr Harbottle should be preferred over that of Mr Walker's which is neither.
- 7.112. As a result the Council's total supply figure should be further reduced by 125 units from between 5,022, to 4,965 units to between 4,897 to 4,840 units.

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<sup>93</sup> Emphasis added

<sup>94</sup> Email from Richard Daone of BANES dated 13 October 2014 subject Re: South West Keynsham Scoping Note

<sup>95</sup> JH App 22 para 2.2.2

<sup>96</sup> JH App 22 Table 2

## THE SOMER VALLEY SITES

### Old Pit Yard, Clandown<sup>97</sup>

- 7.113. This site, as its name suggests, is a former colliery which was last used for the production of concrete blocks. The Council's December 2014 trajectory shows this site delivering 53 units over the five year period with 25 units in 2016/17 and 28 units in 2017/18. This is in contrast to the Council's March 2014 trajectory which showed 30 units being delivered and commencing a year earlier, namely 15 units in each of the years 2014/15 and 2016/17. Mr Harbottle considers that this site is not deliverable. The site does not currently benefit from any extant permission, it is unclear whether it is viable and serious issues need to be overcome prior to development such as contamination<sup>98</sup>.
- 7.114. The Council's November 2013 SHLAA before the Core Strategy Inspector showed planning permission existed for 31 live/work units. However this permission has now expired. An application for 53 dwellings was validated in July 2014 but a decision is still awaited. Mr Walker under cross-examination stated that this figure has reduced to 45 dwellings following an amendment to the application.
- 7.115. This is a curious and difficult site. The fact that permission whilst granted was not in fact implemented is telling. It would seem that the contamination, land stability and remediation consultants have not been paid for the reports carried out on this site in relation to the earlier permission and more worryingly had not been asked to verify or validate any of the remediation or capping work carried out on the site. They have suggested that any conditions attached to the previous permission relating to land contamination and land stability should not be regarded as discharged and should be re-imposed on any subsequent permission. It would be a brave Council that ignored that. Moreover the Coal Authority has recommended that intrusive site investigation works be undertaken prior to any development and the Council's environmental health department considers, unsurprisingly, that the site may be contaminated. Furthermore, Mr Harbottle's clear professional view was that the site was unviable for residential development given its tertiary location. It can therefore be seen that this site gives rise to issues of land contamination, remediation, land stability and financial viability and suitability for residential development.
- 7.116. It is therefore submitted that even if permission is granted for 45 units on this site, and at the moment that is an unknown, in light of the land stability and contamination issues that relate to this site and given its history of an unimplemented consent, coupled with, at the very least, its inadequate remediation to date, and given the concerns of the Coal Authority, the Councils' environmental health officers, and those of Mr Harbottle, that the site should not be relied upon in the absence of a viability assessment that the site would produce a viable and marketable development. This is

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<sup>97</sup> JH App 23

<sup>98</sup> Contamination being particularly mentioned by Stuart Smith J in *Wainhomes* as being a reason why a site may not be considered to be "available now" for the purposes of the NPPF

reinforced by Mr Walker's acceptance that the application, at the date of the inquiry, was not a policy compliant viable scheme and that the Council produced no evidence on viability.

- 7.117. The Council's position in relation to this site has shifted a number of times within the past six months – from 30, up to 53 and then down to 45 units. However the most important aspect of this site is that it is wholly unclear, in the absence of any viability evidence, that it will actually be developed even if a permission is granted for it.
- 7.118. Accordingly, the inquiry heard no evidence upon which to base a finding that the site is likely to come forward to deliver 53, or any, units within the five year period and on this basis, 53 units ought to be removed from the Council's trajectory. As a result the Council's total supply figure should be further reduced by 53 units from between 4,897 to 4,840 units to between 4,844 to 4,787.

Welton, Bibby and Baron<sup>99</sup>

- 7.119. This site is a former carrier bag manufacturing facility. The Council's December 2014 trajectory shows this site delivering 100 units from 2017/18 at 50 units per year. This is a change from the March 2014 trajectory before the Core Strategy Inspector which showed the site delivering 150 units from 2016/17 at 50 units per year. Therefore the Council's trajectory for this site has already slipped by 12 months from that placed before the Core Strategy Inspector. It is submitted that this is symptomatic of the lack of rigour and proper assessment to support either the March 2014 trajectory or the December 2014 trajectory. It is Mr Harbottle's view that the site is not currently available for residential development and should not be included in the five year supply.
- 7.120. The site was allocated in the Local Plan in 2007, however, no residential permission has been granted and no application has been made in respect of it<sup>100</sup>. Mr Harbottle explained to the inquiry that the site is in the control of a promoter who has a conditional contract for a mixed use development including a food store. Mr Harbottle also explained that the food store element of the proposal has stalled due to the current market conditions concerning food retail and that as a result, the site as a whole is currently shelved<sup>101</sup>. Mr Walker agreed that the Council produced no evidence to contradict Mr Harbottle's assessment that the site has "stalled" and agreed that the site is "not at the application stage yet". As the site is currently in the hands of a non-residential developer who is currently not promoting its development it is clear that the site is not available now as required by the NPPF.
- 7.121. Furthermore, there are further difficulties in promoting this site for a mixed use proposal led by a food store as it would appear is desired if the market improves by the promoter of the site. The Placemaking Plan notes that there

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<sup>99</sup> JH App 24

<sup>100</sup> JH App 24 1.4.1

<sup>101</sup> *Ibid* at 24 2.2.4

is a sequentially preferable site to deliver the retail floorspace required<sup>102</sup> and this matter will in any event need to be considered and a conclusion reached through that process which is at a very early stage.

- 7.122. Moreover, even assuming that at some stage the promoters decide to continue with their plans to develop this site, Mr Harbottle's careful analysis of the likely timeframe for bringing forward the development of this site is to be preferred. Specifically Mr Harbottle's evidence shows that, based upon realistic timeframes and allowing for an application to be drawn up, considered, a S.106 agreement negotiated, the site marketed and sold and for the site to be prepared and the construction of units to take place upon it, the site is most unlikely to deliver any units within the five year period<sup>103</sup>. In contrast to this there is no evidential basis for Mr Walker's assertion that the site will deliver 100 units by 2019.
- 7.123. Accordingly a further 100 units should be removed from the Council's trajectory to reflect that firstly it is not available and even if it were to be promoted it would not be delivered in the next five years. As a result the Council's total supply figure should be further reduced by 100 units from between 4,844 to 4,787 units to between 4,744 to 4,687 units.

Paulton House / Somer Enterprise Park<sup>104</sup>

- 7.124. The Council's December 2014 trajectory shows this site delivering 58 units in the five year period. Mr Harbottle considers that this site should not be included in the five year supply.
- 7.125. It is submitted that Mr Harbottle's view is to be preferred. This site is a vacant commercial building on an industrial estate, adjacent to a Focus DIY store, due to be occupied by Wickes, and is currently being marketed by commercial agents. There is no evidence whatsoever to suggest that the site will come forward for residential use within the five year period or at all.
- 7.126. Before the Core Strategy Inspector, the Council relied upon this site in conjunction with a neighbouring site known as the Former Focus Site. It is notable, however, that the SHLAA identified the sites as being "perhaps more suitable for business use". It is submitted that this was the correct assessment<sup>105</sup> and is in full accordance with the evidence of Mr Harbottle.
- 7.127. Mr Harbottle also explained that this industrial building, situated within an industrial estate, is not viable for residential use and cannot be considered as deliverable<sup>106</sup>. In particular, the Council's suggestion that the site could come forward as an apartment based scheme, is, as Mr Harbottle explained, based upon his extensive experience, untenable given the location of the site which is wholly unsuitable for an apartment scheme and that it is unreasonable to consider that house builders would commit to such a scheme in this

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<sup>102</sup> *Ibid* at 2.2.1

<sup>103</sup> JH App 24 table 2

<sup>104</sup> JH App 25

<sup>105</sup> JH App 25/1

<sup>106</sup> JH App 25

location<sup>107</sup>, and that there was unsurprisingly no market demand for such a scheme<sup>108</sup>. Mr Walker accepted that the Council had produced no viability, marketing or indeed any evidence to the inquiry to support the inclusion of this site in its trajectory. In short it is submitted that it is wholly untenable to suggest, on any reasonable basis, that this site could be considered suitable, appropriate, available or deliverable for housing. It is quite clear that the site should be removed from the Council's trajectory, resulting in a further reduction of 58 units. Therefore the Council's total supply figure should be further reduced by 58 units from between 4,744 to 4,687 units to between 4,686 to 4,629 units.

#### St Peters Factory<sup>109</sup>

- 7.128. This site was contained in the Council's March 2014 trajectory as delivering 78 units in the years 2015/16 and 2016/17. This has altered and is now included in the December 2014 trajectory as delivering 70 units commencing a year later. Mr Harbottle has allowed 30 units to be delivered on this site in the fifth year of the five year period.
- 7.129. The site was part of an allocation for a mixed use scheme in the 2007 adopted Local Plan of which some of the allocation was developed. The undeveloped remainder of the allocation was not saved by the adopted Core Strategy and so that part of the site is now outside the settlement boundary of Radstock. It is that remaining part which is shown in the Council's trajectory as delivering 70 units by April 2018.
- 7.130. The inclusion of the site within the Council's December (and March) 2014 trajectory is wholly surprising. The Council's own emerging Placemaking Plan shows a preferred option for the site for a mixed use proposal of 30 dwellings with employment or a residential only scheme of 40 dwellings as a less preferred option. The emerging proposals are in direct conflict with a current application, validated in September 2014, for outline permission for 91 units on the site<sup>110</sup> and which is the subject of in principle objections from Council officers relating to compliance with policy, ecology and landscape matters.
- 7.131. It is incomprehensible, in light of the emerging policy position, and given the site's location outside the settlement boundary and the Council's attitude to the appeal sites which are outside settlement boundaries at this inquiry, that the Council is showing this site as delivering 70 units by April 2018. Indeed policy conflict is cited by the Council's planning policy officer as a potential reason for refusal of this application<sup>111</sup>. Mr Walker, when faced with the Council's inconsistency in respect of this site in cross-examination, accepted that there was "a mismatch" between the application and the Council's emerging policy for the site. Mr Walker stated that in response to the emerging policy he had "reduced to 70" the allocation within the December 2014 trajectory from the previous March 2014 figure of 78.

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<sup>107</sup> JH App 25 para 3.1.3

<sup>108</sup> *Ibid* at 3.2.5

<sup>109</sup> JH App 26

<sup>110</sup> 14/04003/OUT, see JH App 26 at 1.4

<sup>111</sup> JH App 26/3

- 7.132. It is submitted that Mr Walker's approach is both arbitrary and incomprehensible. It is inconsistent with the present application, which is in any event contrary to emerging policy and the Council's attitude to sites outside settlement boundaries at this inquiry, and inconsistent with the Council's own emerging policy for the site. It is submitted that this inconsistency of approach, without any rational explanation or justification, further demonstrates the Council's un-evidenced and eccentric approach to its five year supply trajectory.
- 7.133. In any event, even assuming that the current application proceeds, Mr Harbottle's Gantt chart for this site is generous to the Council in that he has assumed that the issues currently identified with the application can be overcome by negotiation and further submissions, rather than assuming that the application will be refused and need to be appealed or re-submitted. Mr Harbottle has then applied reasonable assumptions as to the timescale for determining the application, reserved matters, negotiating a s.106 agreement and site preparation, in line with his experience and evidence gathered in relation to similar sites, and has concluded that the site is unlikely to begin to deliver units until June 2018. This results in a reduction of 40 units from Council's December 2014 trajectory for the site. This also has the happy coincidence of bringing the site in line with the emerging policy position of 30 units. It is submitted that in light of the above it is appropriate to further reduce the Council's five year trajectory by 40 units. Therefore the Council's total supply figure should be further reduced by 40 units between 4,686 to 4,629 units to between 4,646 to 4,589 units.

#### **Conclusion on the Somer Valley**

- 7.134. It can therefore be seen from the above analysis that the Council's trajectory for the Somer Valley is incorrect and is in fact 251 units less than projected. This is because sites have been included that are either not available, or unsuitable or too much housing has been projected for them. This figure needs to be deducted not only from the five year supply but also from the total figure for the Somer Valley which as shown in the December 2014 trajectory is 2,640 dwellings. In reality only 2,389 dwellings are likely to be provided in the Somer Valley over the Core Strategy period.

#### **Conclusion on analysis of the 18 originally disputed sites**

- 7.135. It can be seen from the above that rather than the claimed five year supply figure of 5,807 units the Council in fact has a supply of between 4,646 to 4,589 units. When this is assessed against the agreed requirement of 5,062 it can be seen that there is a material shortfall of between 416 to 473 units. In short there is only 4.5 years' supply<sup>112</sup>. The shortfall of between 416 and 473 units is not far short of the deficit in supply that existed at the start of the Core Strategy period in 2011 of 608 units<sup>113</sup>. It means that the shortfall has not been met. It means that those dwellings that should have existed three years ago will still not be built 8 years later. It is submitted that in the light of the NPPF's imperative to boost housing supply that is simply

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<sup>112</sup> See for example IJ proof C/EWH/IJ/POE at 6.1.37 for the calculation

<sup>113</sup> JH Proof Table 1 page 7



unacceptable. However it should also be noted that the shortfall is not so catastrophic so as to mean that there is no reasonable prospect of it being remedied.

- 7.136. These three appeals<sup>114</sup> which in combination will deliver 203 dwellings can make a substantial contribution to remedying the shortfall in the five year supply. Mr Harbottle explained that, applying the same approach to these sites that he applied to the 18 disputed sites that Abbots Farm Close, Paulton would begin to deliver units in Q3 2017/18<sup>115</sup> and would be wholly built out within the five year period to 2019. The site, if granted permission, will therefore contribute 47 dwellings to the five year supply. Cappards Road, Bishop Sutton would begin to deliver units within Q4 2016/17 and would also be wholly built out within the five year period and would contribute 32 dwellings. Boxbury Hill would be likely to deliver the first units within Q3 2017/18 and would deliver "around 50% [of 124] or 75 units"<sup>130</sup> within the five year period. In combination the sites could contribute 154 units to the five year supply thereby making a material inroad into the existing shortfall.

### **The consequences of no five year supply**

- 7.137. The consequences of failing to identify sufficient sites are clear within the NPPF and it is to those consequences that these submissions now turn.
- 7.138. The consequences of an authority not having a five year supply are provided for by the NPPF<sup>116</sup> which provides that policies relevant for the supply of housing must be considered out of date and the relevant balancing exercise to apply is that contained in paragraph 14 of the NPPF.

### **Application of NPPF 49**

- 7.139. Paragraph 49 of the NPPF provides as follows:

*"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."*

*The question then arises as to the proper identification of policies which are "relevant policies for the supply of housing" in the context of this appeal.*

- 7.140. In *South Northamptonshire v SSCLG*<sup>117</sup> the High Court considered that the Inspector acted within the remit of his planning judgment in deciding that EV2, a policy restricting development in the open countryside, did fall within NPPF 49, Ouseley J stated as follows:

*"47 It is my judgment that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless*

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<sup>114</sup> APP/F0114/A/14/2214596, APP/F0114/A/14/2215930, APP/F0114/A/14/2217216

<sup>115</sup> JH Gantt chart headed "Abbots Farm Close, Paulton" produced to the inquiry on day 2

<sup>116</sup> Para 49

<sup>117</sup> [2014] EWHC 573 (Admin)

*would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.*

*48 However, once the Inspector has properly directed himself as to the scope of paragraph 49 NPPF as he did here, the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment. In this case, the policy clearly falls within the scope of the phrase and the Inspector was fully entitled to reach the conclusion on it which he did."*

- 7.141. This broad approach to the interpretation of 'relevant policies for the supply of housing' has been applied by Inspectors within recent appeal decisions including the Feniton Park, Devon appeals<sup>118</sup> and Springwell Lane, Whetstone<sup>119</sup>.
- 7.142. In Feniton Park in particular, Inspector Graham expressly concluded that "the assessment to be made is whether a particular policy is related to the supply of housing, and not whether housing is its sole or main purpose." The Inspector went on to conclude<sup>120</sup> that two policies which sought to direct development towards locations within built-up area boundaries and restricted development outside these boundaries were "relevant for the supply of housing" and therefore out of date in the absence of a 5 year supply of housing land.
- 7.143. It is universally accepted that the lack of a 5 year supply renders housing development boundary policies out of date. This position was accepted by the Inspector in the Droitwich appeals<sup>121</sup> and by the High Court in the Cotswold v SSCLG decision above. Accordingly, policies which seek to prevent development outside HDBs, or the parts of policies which do so, are out of date by virtue of NPPF 49. For the present appeals, this translates as policies SV1 and RA1 in so far as they seek to impose a restriction on development outside the HDBs and Local Plan policies HG4 and HG10 which are also restrictive of development outside HDBs.
- 7.144. Additionally, Mr Walker, Ms Tadman and Mr Stone agreed that the spatial strategy contained in policy DW1 and implemented in policies SV1 and RA1,

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<sup>118</sup> APP/U1105/A/13/2191905; APP/U1105/A/12/2197001; APP/U1105/A/13/2197002; APP/U1105/A/13/2200204; CD72

<sup>119</sup> APP/T2405//A/12/2170192; APP/T2405/A/12/2170201; APP/T2405/A/12/2170207; CD70

<sup>120</sup> Para 24

<sup>121</sup> APP/H1840/A/13/2199085 at IR paragraph 8.57; CD69

together with HG4, HG10 and NE1 of the Local Plan must be considered out of date if a five year supply cannot be demonstrated. This must be right in line with the comments of Inspector Graham in the Feniton decision<sup>122</sup> where she states that:

*“A disaggregated approach to the district’s housing requirement may well be a sensible means of planning for the future geographic distribution of housing. But in circumstances where (as here) there are currently insufficient housing sites to meet district-wide needs, paragraph 49 of the NPPF provides that relevant policies for the supply of housing should not be considered up-to-date. In such circumstances there is a pressing need to address the housing shortfall, and no policy basis in the NPPF for applying an in-principle geographical restriction on where that may take place.”*

- 7.145. Accordingly, the spatial strategy provided for within the Core Strategy should be considered out of date so that there is no extant policy basis for seeking to locate development in one settlement over another. Instead, the location of development is determined by applying paragraph 14 of the NPPF as considered against the principles of sustainable development which we turn to address below.
- 7.146. Further, the approach approved by the High Court in South Northamptonshire was that policies that are “relevant to the supply of land” for the purposes of paragraph 49 of the NPPF include policies such as NE1 which are restrictive of development within the open countryside. NE1 is analogous to the policy considered by the Inspector and High Court in South Northamptonshire, EV2.
- 7.147. It is therefore submitted, that as there is no five year supply, policies DW1, SV1, RA1, HG4; HG10 and NE1 are out of date and effectively carry very little if any weight.

#### **Consistency with the NPPF – NPPF 215**

- 7.148. However irrespective of whether there is a five year supply it is necessary to consider whether policies are consistent with the NPPF or out of date or any other reason.
- 7.149. Policies HG4, HG10 and NE1 all date from an expired plan period (up to 2011) and are therefore time expired. Moreover, in relation to preventing development outside the HDBs, the policy text accompanying HG4 explains that the intention of the policy is to set the HDB “for the duration of the plan period”<sup>123</sup>. The HDBs were therefore never intended to endure beyond the plan period which is 2011. Furthermore Core Strategy policies SV1 and RA1 recognise the need to alter those boundaries.
- 7.150. In addition, as explained by Inspector Stephens who was applying the principles established in Colman<sup>124</sup> in his report in Droitwich Spa, endorsed by the Secretary of State<sup>125</sup>, policies which merely seek to prevent or prohibit

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<sup>122</sup> CD72 para 31

<sup>123</sup> Local Plan CD05 p.100 paragraph B7.42

<sup>124</sup> CD 67

<sup>125</sup> CD 69

development and do not allow for a cost/benefit approach are inconsistent with the NPPF and attract less weight<sup>126</sup>.

- 7.151. Policy HG4 of the Local Plan can be read as being wholly permissive in nature in so far as it permits residential development within the HDB and is not applicable to proposals outside those boundaries. However, if it is to be interpreted in any way as restricting development outside the HDB it is inconsistent with the cost/benefit approach in the NPPF and with the relevant Core Strategy policies which envisage the revision of these boundaries.
- 7.152. Policies HG10 and NE 1 are wholly out of step with the approach in the NPPF as they do not permit any benefits to be weighed into the balance and can therefore be accorded very little, if any, weight in line with the approach in Colman and Droitwich Spa. Alternatively NE1 needs to be interpreted in a way which precludes assessment limited to the impact of a site from its immediate boundaries. This is the approach taken by Inspector Wood in granting permission for the Peasedown decision<sup>127</sup>. It is not the approach taken by the Council in assessing the Boxbury Hill site, a matter which we return to later.

#### **Assessment of sustainable development – application of NPPF 14**

- 7.153. Furthermore, the Appellant accepts that the application of paragraph 14 of the NPPF is not tantamount to a free-for-all for developers – as explained by Inspector Graham at paragraph 26 of Feniton<sup>128</sup>. Instead, rather than the ‘standard’ balancing exercise, paragraph 14 of the NPPF dictates that the bar for a refusal of permission requires that the adverse impacts must “significantly and demonstrably outweigh” the benefits of the appeal proposals, a much higher threshold to justify a refusal<sup>129</sup>.
- 7.154. Paragraph 14 involves an assessment of whether the proposals constitute sustainable development. This requires an assessment of whether on a spectrum of sustainability, the disbenefits of the scheme do not significantly and demonstrably outweigh the benefits.
- 7.155. The proper approach to considering sustainability is explained by the Inspectors in Tarporley<sup>130</sup> and Brereton Heath<sup>131</sup>. Sustainability is a ‘multi-faceted concept’ and proposals should be judged against a ‘spectrum of sustainability’; a tick box approach is too blunt a tool for the assessment required. In particular, both inspectors cautioned against over-reliance on locational sustainability which is simply one factor to be taken into account. In the Brereton Heath decision, Inspector Downes made it clear that “*a proposal can be a sustainable one even if it suffers from limitations in terms of accessibility*”.<sup>132</sup>

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<sup>126</sup> CD 69 at 8.15

<sup>127</sup> Jarvis App 15 vol 2 para 11

<sup>128</sup> Ibid at para 26

<sup>129</sup> Monger Lane CD46 para 64

<sup>130</sup> APP/A0665/A/11/2167430 CD49

<sup>131</sup> APP/R0660/A/13/2192192 CD74

<sup>132</sup> CD 74 para 27

- 7.156. As explained by Inspector Graham in the Feniton and in Dartford BC v SSCLG<sup>133</sup> this is not a 'two stage' process. Whether a proposal is sustainable or not is arrived at by merely applying the approach contained in paragraph 14, namely whether the adverse impacts would significantly and demonstrably outweigh the benefits and that is assessed against the three dimensions of sustainable development.
- 7.157. Ms Tadman's evidence as to the application of NPPF 14 involving a first stage analysis of whether the appeal proposals are sustainable and then going on to apply NPPF 14 is therefore demonstrably incorrect, as she had to accept.
- 7.158. These submissions now turn to consideration of whether these three appeal proposals are in accordance with the Development Plan and the NPPF and alternatively as there is no five year supply whether under paragraph 14 permission should be granted. These submissions follow the order within which the appeal sites were considered.

### **Cappards Road, Bishop Sutton**

- 7.159. This section of the conjoined appeals relates to whether outline planning permission should be granted for the erection of up to 32 dwellings on land at Cappards Road in the western part of the village of Bishop Sutton.
- 7.160. The Council's initial reason for refusing permission for this application was prematurity based upon the emerging Core Strategy, which has since been adopted. The Council now suggest that planning permission should be refused based on policy RA1 of the adopted Core Strategy.
- 7.161. Importantly, it was accepted by the Council via Mr Stone that if the Council does not have a five year supply, so that paragraph 14 is engaged, planning permission should be granted for this proposal. That must be the case. There are no substantive objections to this proposal. It can therefore be seen that this proposal does indeed satisfy the three dimensions of sustainable development. The only issue is whether its location outside the settlement boundary justifies a refusal of permission. It is submitted that clearly it cannot.

### Policy RA1

- 7.162. It is submitted that irrespective of the five year housing land supply position, the proposal for 32 dwellings is in accordance with the policy objective contained within RA1 of the Core Strategy to deliver "around 1,120" within the Rural Areas. In particular, the policy envisages that these dwellings can be located on greenfield land outside the Housing Development Boundary.
- 7.163. The "around 1,120" dwellings identified within DW1 as being allocated to the Rural Areas is not to be seen as a cap and neither is the suggestion in the supporting text of "around 50 dwellings" to each RA1 village. This accords with the Council's approach to other RA1 villages such as Temple Cloud, a greenfield site for 70 dwellings, outside the settlement boundary, which was granted permission following Mr Stone's positive recommendation<sup>134</sup> despite

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<sup>133</sup> Dartford BC v Secretary of State for Communities and Local Government [2015] 1 P&CR 2

<sup>134</sup> See Officer's Report for Temple Cloud at IJP Bishop Sutton Proof App 13

the Council not considering the site is needed for its five year supply. There is no basis for applying a different approach at Bishop Sutton. Regardless of the five year supply position, there can be no in principle objection sufficient to warrant refusal for the simple reason that the site is located outside the boundary.

- 7.164. The HDBs are a feature of a time expired plan which expressly purported only to define HDBs "for the plan period" i.e. up to 2011. Further, as *per* the approach taken by Inspector Grindey in Ham Lane and Milford Head<sup>135</sup>, in considering compliance with RA1 it is appropriate to consider the merits of the proposal and the site on its own terms rather than seeing RA1 as a blanket prohibition on all development outside the HDB, which plainly it is not.
- 7.165. This is also in accordance with the approach taken by Inspector Tamplin in the Church Lane<sup>136</sup> appeal where she demonstrably did not approach the figure within RA1 as a cap in relation to two applications for development on greenfield sites despite the number of permitted units having exceeded 50 at the date of her decision. Inspector Tamplin also, and taking account the units potentially arising out of this appeal, expressly disagreed with a submission that Bishop Sutton was being "swamped by development"<sup>137</sup>.
- 7.166. Unlike those sites there are no substantive objections to, or reasons to refuse, this proposal
- 7.167. The approach taken by the Council in relation to development at Temple Cloud was whether the additional dwellings over and above the "around 50" figure would give rise to any unacceptable impacts and concluded that they would not. Applying the same approach here would involve giving consideration to whether the additional 32 dwellings to be provided at Bishop Sutton would give rise to unacceptable impacts.
- 7.168. The draft Stowey Sutton Neighbourhood Plan takes a restrictive approach to the HDB, however, it is submitted that at present this can carry little, if any, weight as it has not been the subject of consultation or examination. This was agreed by Mr Stone on behalf of the Council.
- 7.169. Therefore, in considering whether the appeal proposals are in compliance with RA1 it is relevant to consider the merits of this scheme. Unlike the sites proposed at Ham Lane and Milford Head, there are no landscape objections to the appeal site, indeed aside from being outside the HDB there are no development control or technical objections to this site whatsoever. It is therefore submitted that the appeal proposal is in broad accordance with RA1 of the Core Strategy and there are no adverse impacts, let alone unacceptable ones, arising from the appeal proposals.

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<sup>135</sup> See in particular paragraphs 8-11 of Ham Lane APP/F0114/A/14/2217941 and paragraphs 9-10 of Milford Head APP/F0114/A/14/2218780

<sup>136</sup> APP/F0114/A/13/2206657 and 2206660

<sup>137</sup> Ibid at para 16

## Sustainability

- 7.170. As already set out above the concept of sustainability for the purposes of the NPPF is properly approached in terms of a spectrum of sustainability<sup>138</sup>.
- 7.171. Bishop Sutton has been identified by the Council as being one of the four most sustainable villages within the Rural Areas that is not within or surrounded by the Green Belt. No parties to the inquiry presented evidence that any of the local facilities were at or near to capacity and it therefore cannot be said that the residents of the additional 32 dwellings generated by the appeal proposals would cause any particular strain on local facilities such as schools or health facilities.
- 7.172. Planning permission had already been granted for two sites in Bishop Sutton at the eastern (41 dwellings) and western ends (35 dwellings) of the village. Indeed this site forms the remainder of the field where the 35 units on the western end of the village are currently under construction<sup>139</sup>. The Council suggests a potential lack of social cohesion of the new residents of the appeal site with existing residents as a factor detracting from the sustainability of the proposals and referred to Feniton.<sup>140</sup> No evidence has been adduced that this would in fact occur. Furthermore, Inspector Graham in Feniton clearly concluded that where, as here, there is no tangible evidence of development leading to a lack of social cohesion, whilst this may remain a factor to be considered, it is not capable of amounting to a reason for refusal.
- 7.173. There are no landscape or other environmental objections to the scheme raised by the Council or statutory consultees. In particular, it is relevant to note that impacts on the AONB and Chew Valley Lake were raised as issues by respondents to the Council's consultation regarding the planning application but no landscape or ecological objections were raised by professional officers of the Council or by relevant consultees. The Council's ecology officer considered that, subject to condition, the scheme was acceptable. Indeed in his report recommending approval for this scheme Mr Stone accepts that the site is locationally sustainable and that the scale of growth of 35 dwellings units, when taken together with the existing permissions, which would provide a total of 103 dwellings, is acceptable. Moreover the proposal will provide for much needed affordable housing in the Rural Areas which on current commitments will produce well below the 30% target for this area<sup>141</sup>.
- 7.174. Accordingly, it can be seen that the appeal proposals represent sustainable development, as they will bring economic and social benefits through contributions to the economy and by the provision of market and affordable housing and will not give rise to any adverse environmental impacts.

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<sup>138</sup> See Tarporley (CD49) at paragraph 200 and Brereton Heath (CD 74) at paragraph 25

<sup>139</sup> See Plan Mr Jewson Appendices App 1 page 135; App 5 page 79

<sup>140</sup> DS App 6 para 87-88

<sup>141</sup> See RW App 1 199/1159 dwellings; para 5.12 of the Core Strategy page 88

### Conclusion on Cappards Road proposal

- 7.175. It is therefore submitted that irrespective of the five year supply position, the proposal is not contrary to RA1 simply because of its location outside the settlement boundary. It constitutes sustainable development and permission should be granted.
- 7.176. In any event, the Council cannot demonstrate a five year supply of housing land and in those circumstances it is agreed that permission should be granted.

### **The section S106 obligations**

- 7.177. A section 106 obligation is produced and the contents are agreed by the Council. During the course of this Inquiry, the parties were made aware of the High Court decision in *Oxfordshire County Council v SCLG*<sup>142</sup> wherein Lang J held that an Inspector did not err in law in finding that a local authority's administration and monitoring costs associated with a s.106 agreement were not compliant with the Community Infrastructure Levy (CIL) Regulations<sup>143</sup> and the Inspector properly found that the costs were not "necessary to make the development acceptable in planning terms" for the purposes of CIL Regulation 122.
- 7.178. In parallel with the facts of Oxfordshire, the unilateral undertaking presented to the Inspector in connection with this appeal provides for the payment of a fee to the Council in respect of the administration and monitoring of the s.106 obligation – Clause 11. The obligation also includes provision for the Appellant to pay a sum to the Council in respect of the Council's legal fees associated with the consideration of the s.106 obligation – Clause 18. It has been agreed between the parties to this appeal that, pursuant to the decision in Oxfordshire, both the sums due pursuant to Clause 11 and Clause 18 are not necessary to make the development acceptable in planning terms and accordingly are not CIL compliant.
- 7.179. The agreements also make provision for a "blue pencil" clause – Clause 9. Accordingly, upon a finding by the Inspector that Clauses 11 and 18 do not meet the test provided by CIL Regulation 122, the relevant Clauses will cease to have effect. The Inspector is therefore invited to make such a finding within his report.

### **Overall Conclusions**

- 7.180. In conclusion, the Appellant's case in relation to each of the identified main issues (relevant to the Cappards Road appeal) may be summarised as follows:

*Whether there is a 5-year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the directions for growth and the release of housing sites.*

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<sup>142</sup> [2015] EWHC 186 (Admin)

<sup>143</sup> Community Infrastructure Levy Regulations 2010



- 7.181. It is submitted that, for the reasons set out above, the Appellant's evidence demonstrates that the Council has identified housing land equivalent to only 4.5 year's supply rather than the requisite 5 years and there is therefore a material shortfall. Accordingly, a number of development plan policies relevant to the determination of these appeals are out of date, namely, DW1, SV1, RA1, NE1, HG4, HG10 and the Council's overall spatial strategy for the purposes of NPPF 49.
- 7.182. The appeal proposals therefore ought to be approached on the basis of the test set out within paragraph 14 of the NPPF.
- 7.183. However, even if the Secretary of State does consider there to be a five year supply of housing land, it is submitted that the appeal proposals are broadly in accordance with the policies for growth in the district contained within the Core Strategy and on this basis, planning permission ought to be granted for the appeal proposals.

#### Spatial Strategy for BANES

- 7.184. It is submitted that the appeal proposals, if constructed, would not undermine the broad spatial strategy set out within DW1 and table 1B of the Core Strategy but rather would be in accordance with it. The development within Rural Areas would still be "around" the allocated figure, namely 1,120.
- 7.185. Mr Jewson's additional note to the inquiry on this issue draws attention to the Council's own December 2014 trajectory which provides that the 1,120 figure is projected to be exceeded<sup>144</sup>. Miss Hampden agreed that in reaching such projections, the Council still considers this figure to be policy compliant.
- 7.186. In the Rural Areas, the Council projects that the area will deliver 1,159 units over the plan period. The addition of 32 units from the appeal scheme will therefore produce a figure of 1,191 for the Rural Areas over the plan period.
- 7.187. This addition cannot be said to be material in the context of the spatial strategy or the plan period as a whole. One way to test this, as highlighted by the Inspector, is to consider the additional units from the appeal schemes in terms of their effect on the percentage distribution provided for by table 1B of the Core Strategy as follows:

<i>Policy Area</i>	<i>CS Allocation</i>	<i>CS %</i>	<i>Planned for development (inc. appeal sites)</i>	<i>Percentages if all planned development built out including appeal sites</i>
Bath	7,020	54%	7,020	52.2%
Keynsham	2,150	16.5%	2,150	16%
Somer Valley	2,470	19%	(2,640) <sup>145</sup>	(19.9%)
			2,811 <sup>146</sup>	20.9%

<sup>144</sup> IJ employment/housing note paragraph 1.11- 1.13

<sup>145</sup> Council's trajectory for the Somer Valley

			2,560 <sup>147</sup>	19%
Rural Areas	1,120	8.5%	1,191	8.9%

7.188. It is clear, on the basis of the above, that the addition of the units generated by the appeal scheme will not materially alter the spatial distribution provided for by the Core Strategy. The development figures will still be “around” those allocated within table 1B of the Core Strategy.

7.189. This spatial distribution – the weighting of development towards Bath in the first instance and then to sustainable towns within the Somer Valley – was partially a response to the jobs/homes balance<sup>148</sup> and the distribution in DW1 can be regarded as delivering an acceptable jobs homes balance. It can be seen from the above that this distribution and therefore the balance will remain unaffected by these proposals. In particular, the test provided for by paragraph 4.15 of the Core Strategy is whether additional development would significantly worsen the jobs/homes balance. Clearly that would not be the case here, where the increase is not material.

*Whether granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy Local Plan, having regard to the scale and distribution of development*

7.190. For the reasons set out above, irrespective of the five year supply position, the development is in accordance with the spatial strategy, set out in DW1 and RA1 of the Core Strategy. Furthermore it is agreed that the proposal is not contrary to any other development plan policies and on any analysis the proposal clearly constitutes sustainable development when the three dimensions are properly considered.

7.191. Further, the Council cannot demonstrate a five year supply of housing land and it is agreed in these circumstances that permission should be granted for this proposal.

7.192. For all the reasons given above outline permission should be granted for the site and the Secretary of State is respectfully invited to do so.

**Further (written) submissions in response to the decision of the Secretary of State to recover determination of the Cappards Road appeal.**

7.193. The submissions below are those given in Inquiry Document PI 05. References in the following paragraphs to Appendices 1-6 refer to the appendices appended to Document PI 05.

7.194. On 27 February 2015, the conjoined inquiries into three appeals, of which the above mentioned appeal was one, and which had taken place over a period of four weeks, closed. According to the bespoke timetable the final date for

<sup>146</sup> Council's trajectory for Somer Valley plus Boxbury Hill and Abbots Farm

<sup>147</sup> Mr Harbottle's trajectory for the Somer Valley plus Boxbury Hill and Abbots Farm

<sup>148</sup> See Core Strategy 4.15

issuing decisions in respect of these three appeals was 20 May 2015. In accordance with that timetable two decisions refusing permission were issued by Inspector Hill, the Inspector appointed to determine the appeals. In respect of the third appeal, on the same date, 20 May 2015, the Secretary of State recovered jurisdiction of the appeal from Inspector Hill. The reason given by the Secretary of State for recovering jurisdiction of the appeal is that it involves a proposal for residential development of over 10 units in an area where a neighbourhood plan has been submitted to the local planning authority. The Stowey Sutton Neighbourhood Plan ("the NP") was in fact submitted to the Local Planning Authority on 29 January 2015, four months before the appeal was recovered. It is unclear why four months after the NP had been submitted the Secretary of State then decided to recover the appeal and why this occurred on the last day the decision was due to be issued. The only logical explanation for the last minute recovery of this appeal by the Secretary of State is that Inspector Hill was about to issue a decision granting planning permission for this proposal. A request for the production of that decision has been refused. Rather than determine the matter himself, Inspector Hill is now required to provide a report to the Secretary of State on this appeal who will now determine it himself.

- 7.195. These submissions are produced in response to an invitation to the parties from Inspector Hill via an email from Leanne Palmer of the Planning Inspectorate ("PINS") dated 24 June 2015 on the NP now that it has been examined. In particular any representations on the following:
- a. The conclusion of that examination.
  - b. Where the plan now stands along the route to adoption.
  - c. How the plan should be interpreted with regard to the appeal scheme.
- 7.196. Before these matters are addressed the Appellants draw attention to the following three points.
- 7.197. Firstly, a revised bespoke timetable has now been produced by PINS for this appeal. This timetable provides that Inspector Hill must submit his report to the Secretary of State on or before 23 September 2015 and that the Secretary of State will issue his decision on or before 9 December 2015. A proposed decision date 19 months after the start date for this appeal.
- 7.198. Secondly, the two appeal decisions that were issued on 20 May 2015 and which refused permission for the Boxbury Hill and Paulton sites are the subject of a challenge under section 288 of the Town and Country Planning Act 1990. The hearing of that challenge has been fixed for 26 November 2015, although it is unlikely that the outcome of the challenge will be known on that date as judgment is likely to be issued some time thereafter.
- 7.199. Thirdly, the information provided in the representations from Bath and North East Somerset ("the Council"), dated 7 July 2015, state that the referendum on the NP will take place on 7 August 2015 and that if the NP receives a majority of the votes it will be made by the end of September 2015.
- 7.200. In light of the above timings it may be the case that it will be necessary for the Appellant to be given the opportunity to make further representations on this appeal once the outcome of the section 288 challenges and the

referendum are known and before the decision is issued. However the Appellant contends for the reasons set out below that it matters not whether the NP is in an examined or made state as the approach to decision making is the same in both circumstances.

- 7.201. Before the matters raised in the email from PINS, dated 24 June 2015, are addressed it is necessary to consider the conclusions reached by Inspector Hill on the five year supply in relation to the two decisions issued on the other conjoined appeals APP/F0114/A/14/2215930 ("The Boxbury Hill decision") and APP/F0114/A/14/2214596 ("The Paulton decision") on 20 May 2015 that are now the subject of legal challenges.

#### The Boxbury Hill and the Paulton decisions

- 7.202. As the issue of five year housing land supply is relevant to the determination of all three appeals, the overall conclusion reached by Inspector Hill as to whether there is a five year housing land supply in the two issued decisions, is relevant to the determination of this appeal.

- 7.203. The Appellant submits it is critical to note, at paragraphs 51 and 83 respectively of the Paulton and Boxbury Hill decisions, that the overall conclusion of Inspector Hill in both appeals is as follows:

*" I have come to the conclusion that there is a shortfall in the 5-year housing land supply in the Housing Market Area, and therefore the expectations set out at paragraph 49 of NPPF come into play"*

- 7.204. As the Housing Market Area equated to the Council's administrative area there is a clear finding by Inspector Hill that the Council does not have a five year supply. The requirement that a five year supply is for the whole of a local plan area is inherent in paragraphs 14 and 49 of the NPPF is established, in *Woodcock Holdings v Secretary of State*<sup>149</sup> ("the Woodcock Case") (Appendix 1)<sup>150</sup>. This was not a decision placed before Inspector Hill by the parties as it was published on 1 May 2015 after the conjoined inquiries closed.
- 7.205. The Woodcock case makes it clear that in considering the interaction between paragraphs 49 and 14 of the NPPF the starting point is paragraph 49. This is because paragraph 49 is part of a specific group of policies which have the objective of boosting housing supply and requiring local planning authorities to identify on a continuing basis a five year supply of housing land to meet properly assessed needs. Paragraph 49 addresses the consequences of an authority's failure to meet that obligation. Paragraph 49 of the NPPF is capable of applying to policies in a statutory development plan where, as a matter of fact, that development plan is up to date because it is only recently adopted.
- 7.206. As a result the phrase "*should not be considered up to date*" contained in paragraph 49 operates as a deeming provision which treats the relevant policies as being out date so as to engage the presumption in favour of

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<sup>149</sup> [2015] EWHC 1173 (Admin) per Mr Justice Holgate at paragraph 112

<sup>150</sup> *ie Appendix 1 to Inquiry Document PI 05.*

sustainable development. The object of paragraph 49 is to increase the likelihood of planning permission being granted for a housing proposal where a five year supply does not exist. Therefore policies are treated as out of date where there is no five year supply even where under paragraph 14 that would not otherwise be the case.

- 7.207. Paragraph 49 can only be read as extending the ambit of paragraph 14. It has the effect of extending the scope of the presumption in favour of sustainable development set out in paragraph 14 so as to apply to draft as well as adopted plan policies but only where there is not a five year supply of housing land and only in relation to housing supply policies. Paragraph 49 operates to treat the housing supply policies in a statutory development plan as being out of date even if the document had been formally approved only shortly before hand and could not otherwise be regarded as out of date as explained in the Woodcock Case (paragraphs 100-106).
- 7.208. As a result of Inspector Hill's finding that there was not a five year supply in the Housing Market Area, there was not just an expectation that paragraph 49 came into play, it did in fact come into play and should have been applied. As a result of the absence of a five year supply the policies in the adopted core strategy that are relevant to the supply of housing should have been treated as out of date. In particular policies which seek to prevent development outside Housing Development Boundaries, or the parts of policies which do so, are out of date by virtue of NPPF 49.
- 7.209. It was agreed by the Council's planning witnesses in all three appeals, Mr Walker, Ms Tadman and Mr Stone, that the spatial strategy contained in policy DW1 and implemented in policy RA1, together with HG4, HG10 and NE1 of the Local Plan must be considered out of date if a five year supply cannot be demonstrated. In the case of the Bishop Sutton appeal it was therefore agreed that the policies which were relevant to the supply of housing included policies DW1 and RA1 of the adopted Core Strategy and policies HG4 and HG10 of the saved Local Plan.
- 7.210. However in the Boxbury Hill and Paulton decisions, where the equivalent policy to RA1 was SV1, Inspector Hill did not treat those policies as out of date. Rather he adopted a disaggregated approach to the five year supply for each spatial distributional area and as he found there was a five year supply in the relevant distributional area he treated the policies as up to date rather than out of date. The Appellant contends that in light of the Woodcock case this was unlawful and it is this issue, amongst others, that now forms the basis of a section 288 challenge to those two decisions. The detailed reasons for the challenges are set out in the Details of Claim which are attached to this representation<sup>151</sup> as Appendix 2<sup>152</sup> and which are not repeated.

#### The Stowey-Sutton Neighbourhood Plan

- 7.211. In light of the above it is necessary to consider how these principles apply to the emerging NP. However before that is done it is necessary to consider the

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<sup>151</sup> Included with the documents for this appeal as Inquiry Document PI 05

<sup>152</sup> *ie Appendix 2 to Inquiry Document PI 05*

nature of the NP and the basis upon which the examining Inspector has endorsed the Housing and Development Policies in the NP.

The nature of the NP

7.212. The relevant policies in the Core Strategy for considering the strategic context for the NP are policies DW1 and RA1. DW1 looks to increase the supply of housing by around 13,000 dwellings which the Core Strategy makes clear is not to be regarded as a cap. It requires that development in the rural areas, where the appeal site is located, should be at settlements with a good range of local facilities and good access to public transport. Bishop Sutton meets the criteria for an RA1 village. RA1 provides that:

*“At the villages outside the Green Belt which meet these criteria, development sites will also be identified in the Placemaking Plan and the housing development boundary will be reviewed accordingly to enable delivery during the Plan period of the 1,120 dwellings identified on the Key Diagram. Residential development on sites outside the Green belt adjoining the housing development boundary at these villages will be acceptable if identified in an adopted Neighbourhood Plan”.*

7.213. RA1 therefore provides the opportunity for the local community through a NP to make provision for additional development over and above that provided for in the Council’s Placemaking Plan. The Placemaking plan is at a very early stage of development.

7.214. Emerging policies SSHP01 and SSHP03 of the NP state:

*“Housing and Development Policy SSHP01 Housing Boundary*

*The housing development boundary (HDB) for Bishop Sutton should be redefined to strictly follow the existing HDB but with the addition of the strict boundary of the two already approved housing developments of Cappards and Oak Park which together total 76 houses.*

*Reason: As the number of new houses already approved by B&NES has already exceeded the ‘around 50’ allocated to the Parish as an RA1 village within the Core Strategy for the period to 2028, further large scale development would be in contravention of the Core Strategy. Redefining the housing development boundary so that it matches the existing, with tight extensions around the recently approved developments, in accordance with the B&NES Placemaking plan HDB Criterion.”*

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*Housing and Development Policy SSHP03 Development Character*

*The Neighbourhood Plan will support future housing development which will reflect the character, varied materials and varied build design as identified through the Character Assessment and should be limited to infill within the amended HDB.*

*Reason: The already permitted development of 76 homes within Bishop Sutton exceeds the target to 2029 (in the Core Strategy) and equates to 14% of the village of Bishop Sutton this strongly suggests that the village*

*has reached and exceeded its "critical mass" and the infrastructure cannot support additional housing beyond infill"*

- 7.215. It can therefore be seen that policy SSHP01 seeks to redraw the housing development boundary to accommodate two developments. One is the adjoining land to the Bishop Sutton Site which was granted planning permission by the Council (Ref 12/04238/OUT) for 35 houses. The other was a scheme for 41 houses granted on appeal to the Secretary of State (Ref: APP/F0114/A/13/2196478).
- 7.216. This NP is not therefore a neighbourhood plan where the local community has decided to assess the suitability or otherwise of sites for allocation for housing outside the Housing Development Boundary as provided for in policy RA1 of the Core Strategy. Instead, the NP seeks only to reflect the situation as it exists on the ground after two housing developments were granted outside the control of the NP Forum and prior to the NP being drafted. Therefore the redrawing of the HDB merely reflects permitted development and has not involved the engagement of the Neighbourhood Forum in any other way in respect of the suitability of any other land for development other than that found suitable by the Council and the Secretary of State. In these terms it is a no development NP. Moreover the NP is predicated on the way that it would contravene the Core Strategy to draw the HDB anywhere else. This is clearly wrong.
- 7.217. It can be seen that this NP is quite different to the NP considered by the Secretary of State and subsequently the High Court in *Crane v Secretary of State* [2015] EWHC 425 (Admin)<sup>153</sup> ("the Crane Case") (Appendix 3)<sup>154</sup>. In that case there was a specific allocation of 400 houses to the village of Broughton Astley in the Core Strategy. The Neighbourhood Forum had considered and assessed in detail a number of sites as to their suitability and sustainability for residential development<sup>155</sup>. After conducting a thorough assessment, the Forum sought to allocate its chosen sites for development and the NP contained sites amounting to 528 dwellings which had to be added to an additional 120 dwellings already permitted. Clearly the allocations and permitted development which in total amounted to 648 dwellings were well in excess of the 400 dwellings allocated under the Core Strategy. The appeal site under consideration in that case was not such an allocated site.
- 7.218. The NP considered by the Secretary of State and subsequently by Mr Justice Holgate in the *Woodcock* case<sup>156</sup> was also quite different to the Stowey Sutton NP. The emerging NP relied upon an assessment of 25 potential housing sites and proposed 4 specific site allocations for one village, with approximate numbers of dwellings for another village within the NP area. Nevertheless, Mr Justice Holgate drew a clear distinction between NPs which allocate numbers, such as one of the villages in the NP in the *Woodcock* case,

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<sup>153</sup> [2015] EWHC 425 (Admin)

<sup>154</sup> *ie Appendix 3 to Inquiry Document PI 05*

<sup>155</sup> See *Ibid* at para 6 -18

<sup>156</sup> [2015] EWHC 1173 (Admin)

and NPs which allocate sites, such as the NP in the Crane case. The latter being described by Holgate J as a “comprehensive spatial strategy”.

- 7.219. The Stowey Sutton NP is in stark contrast to both these NPs. It is a very different sort of plan. It does not allocate any dwelling numbers for development, its preparation has not assessed the suitability of any sites for housing and does not allocate any new housing sites at all. It merely reflects what other decision makers have considered appropriate development for planning permission in the face of opposition from the Neighbourhood Forum. The NP provides that only infilling is appropriate within the HDB. It is a no development NP. It does not provide any spatial strategy let alone a comprehensive one.
- 7.220. Additionally, it is important to note the stated policy rationale behind the Secretary of State’s amended criteria for recovering jurisdiction of appeals involving neighbourhood plans. In particular, the Ministerial Statement on Neighbourhood Planning states that the *Government’s “clear policy intention when introducing neighbourhood planning...[was] to provide a powerful set of tools for local people to ensure that they get the right types of development for their community.”* The criteria for the recovery of appeals were stated to be so that the Secretary of State could “*consider the extent to which the Government’s intentions are being achieved on the ground.*” (Appendix 4<sup>157</sup>)<sup>158</sup>.
- 7.221. Against that background, it is clear that this NP does not allocate sites and does not provide a mechanism for local people to achieve “the right types of development”. It does not provide a spatial strategy. It merely re-states existing policy relating to the HDB (Local Plan Policies HG4 and HG10) albeit with an amendment to include already permitted sites. Therefore as there is an absence of a five year supply the policies which merely seek to prevent development beyond the HDB without any consideration of where suitable development might go are not only out of date but can carry no weight.

#### The examining Inspector’s report

- 7.222. Moreover, there are particular concerns in respect of these emerging NP policies and the examining Inspector’s report.
- 7.223. In considering whether the basic conditions are met, and, in particular, whether these policies are in general conformity with the Core Strategy the examining Inspector makes various errors.
- 7.224. Firstly, he treats the reference in the explanatory text to RA1 of the Core Strategy “to around 50 dwellings at each of the villages”, as a “requirement” of the Core Strategy for 50 dwellings per village and that this “requirement” has already been exceeded. He therefore treats the Core Strategy as applying a requirement for 50 dwellings in Bishop Sutton and no more, which it does not. The suggestion in the reason to justify policy SSHP01 that any more dwellings would contravene the Core Strategy and that in effect the Core Strategy provides an embargo on additional development in Bishop

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<sup>157</sup> *ie Appendix 4 to Inquiry Document PI 05*

<sup>158</sup> <https://www.gov.uk/government/speeches/neighbourhood-planning>



Sutton is simply wrong. However it does reflect the negative nature of the NP and its role to prevent rather than facilitate sustainable development.

- 7.225. Secondly, he rejects the Appellant's representations that policy RA1 contemplates as acceptable further development outside the village HDB if identified in a NP and that the Parish Council has failed to consider whether there are any suitable sites for such identification, including the appeal site. The examining inspector says that there are no strategic policies upon which to base a more significant growth strategy. This however ignores the part of RA1 that provides for this which is set out above
- 7.226. Thirdly the reason given for SSHP03 in the NP is that the 76 permitted dwellings which equates to 14% of the village of Bishop Sutton *"strongly suggests that the village has reached and exceeded its critical mass and the infrastructure cannot support additional housing beyond infill"* is wholly un-evidenced and remains so. No assessment of the ability of the infrastructure to accommodate more development has been undertaken. It is no more than an unjustified assertion. Indeed there were no development control objections from the Council at the Bishop Sutton appeal and certainly no objections or evidence that Bishop Sutton had reached or exceeded its critical mass and/or that the infrastructure could not support the appeal proposal. The Appellant's letter of objection and the relevant extract from the Inspector's report are produced at Appendix 5<sup>159</sup>. These factors inevitably affect the weight that can be attached to policy SSHP01 and 03 in any event. It may mean that in due course the NP, if adopted in its current form, will be the subject of a successful legal challenge.

#### SSHP01/03 and paragraph 49 of the NPPF

- 7.227. In any event it is clear that SSHP01 and SSHP03 are policies relevant to the supply of housing as they seek to restrict development to within the housing development boundary. They are therefore rendered out of date by the application of NPPF 49. These policies therefore should be treated in a like-manner to policies DW1; SV1; RA1, HG4 and HG10. SSHP01 and 03 add little to the district-wide policies save that they seek to draw the HDB in a slightly different place to accommodate other development allowed on appeal or granted permission due to the absence of a five year supply. In applying paragraph 14 and in considering the adverse impacts, the conflict with these out of date policies should attract very little if any weight.
- 7.228. In short the relevant policies in the Core Strategy and the NP should all be treated as out of date and little weight given to any conflict with them. The locational acceptability and the acceptability generally of the Bishop Sutton site should be determined by applying paragraph 14 of the NPPF as considered against the principles of sustainable development.

#### Assessment of the sustainability of the Bishop Sutton site – application of NPPF 14

- 7.229. Paragraph 14 of the NPPF dictates that the bar for a refusal of planning permission requires that the adverse impacts must "significantly and demonstrably outweigh" the benefits of the appeal proposal. The effect and

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<sup>159</sup> ie Appendix 5 to Document PI 05

intended effect of paragraphs 49 and 14 is to increase the likelihood of planning permission being granted as explained in the Woodcock case.

- 7.230. It is of considerable importance to the determination of the Bishop Sutton appeal to note that it was agreed by the Council's planning witness, Mr Stone, that if the Council does not have a five year supply (which Inspector Hill has found it does not), paragraph 14 is engaged and, crucially, that planning permission should be granted for this proposal<sup>160</sup>. Indeed he recommended permission be granted in his report at a time when the Council itself accepted an absence of a five year supply.
- 7.231. This must be the case. There are no substantive objections to the Bishop Sutton Site. It can therefore be seen that this proposal does indeed satisfy the three dimensions of sustainable development. The only issue is whether its location outside the settlement boundary alone justifies a refusal of permission. It is submitted that for the reasons set out above clearly it cannot and accordingly planning permission ought to be granted.
- 7.232. It is clear that there are no adverse impacts of the development, let alone impacts capable of significantly and demonstrably outweighing the positive elements of the scheme.
- 7.233. RA1 villages are recognised in the Core Strategy as being the most sustainable locations in the Rural Areas. Bishop Sutton is an RA1 village as it has the required facilities and services and access to public transport.<sup>161</sup>
- 7.234. As set out within Mr Jewson's evidence at para 6.1.44:

*"6.1.44 There are no adverse impacts associated with the development. This is confirmed by a lack of any technical objections from consultees. A summary of the situation is set out below:*

- *Arboriculture: The Arboricultural Officer initially raised concerns about the impact of the proposed development on trees and hedgerow (particularly the western hedgerow). Following dialogue with the Planning Case Officer the Illustrative Layout was amended to include a maintenance corridor along the western boundary of the site. As a result the objection was withdrawn.*
- *Archaeology: No objection subject to planning conditions.*
- *Coal Authority: No objection.*
- *Crime Prevention Design Adviser: No objection.*
- *Ecology: No objection subject to planning conditions.*
- *Education: No objection subject to financial contributions.*
- *Environment Agency: No objection.*
- *Flood Risk and Drainage: No objection subject to a planning condition(s).*

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<sup>160</sup> Mr Stone accepted in cross examination on week 2 day 1 (day 5) of the Conjoined Appeals inquiry

<sup>161</sup> See Proof of Evidence of Mr Ian Jewson Section 6

- *Highways: No objection subject to planning conditions and a financial contribution.*
- *Landscape: The Landscape Officer initially raised concerns about the impact of the proposed development on trees and hedgerow (particularly the western hedgerow). Following dialogue with the Planning Case Officer the Illustrative Layout was amended to include a maintenance corridor along the western boundary of the site. The LPA accept that this addressed the issue.*
- *Planning Policy: No objection.*
- *Wessex Water: No objection."*

7.235. Moreover, notwithstanding the location of the site outside the HDB, it was accepted by the Council that it is well located in terms of sustainability. As explained by Mr Jewson at para 6.1.8-9 of his proof of evidence:

*"6.1.8. In terms of accessibility the site is sustainably located for the scale of the development and provides the opportunity for future residents to walk and cycle to local services and amenities. This is acknowledged by the Planning Case Officer on page 129 of his Report to the Development Control Committee on 12th March 2014 (Appendix 6) which states:*

*"Whilst the site is located outside the housing development boundary, it is considered to be quite well related to the facilities available within Bishop Sutton, being located within 400 metres of the primary school, Red Lion Public House, church, shop/post office and Bus stops. Other facilities are located slightly further away, but still within convenient walking distance on Wick Road."*

*6.1.9 On the basis of the above it can be concluded that the proposed development accords with the social role of the planning system."*

#### Conclusions on the application of SSHP01/03

- 7.236. In line with the proper approach to HG4 and HG10, no weight can attach to SSHP01/03 in the determination of this appeal as no weight can properly attach to the mere existence of an HDB in the absence of a five year supply of housing land and the absence of any identified planning harm arising from the development.
- 7.237. The emergence (and even the subsequent making) of SSHP01/03 adds nothing to the determination of this appeal as it is, in effect no more than an updated version of HG4/HG10 of the Local Plan.

#### Compliance with relevant policies

- 7.238. In any event, it is the Appellant's case that the development ought to be permitted even if, contrary to the Appellant's primary submission, the Secretary of State considers that the Council can demonstrate a five year supply and relevant policies are therefore not out of date.
- 7.239. As set out above, there are no planning or technical objections to the development of the Bishop Sutton site aside from the simple fact of it being outside the HDB.

- 7.240. Even if weight were to be accorded to HDB policies (HG4, HG10 and now, SSHP01) the mere existence of the HDB cannot be sufficient to outweigh the benefits of the scheme and its inherent sustainability even outside the para.14 test.
- 7.241. As accepted by BANES, notwithstanding the Site's technical location, it is a sustainable location for development in terms of its accessibility to facilities and proximity via sustainable travel modes to shops, schools and services. Moreover the proposal will provide for much needed affordable housing in the Rural Areas which on current commitments will produce well below the 30% target for this area<sup>162</sup>.
- 7.242. No parties to the inquiry presented evidence that any of the local facilities were at or near to capacity and it therefore cannot be said that the residents of the additional 32 dwellings generated by the appeal proposals would cause any particular strain on local facilities such as schools or health facilities. Indeed, the Parish Council did not suggest anything of the sort.
- 7.243. In line with the approach approved in the Woodcock case<sup>163</sup> it is necessary, when considering whether proposals are in conflict with the scale of development approved by the NP (and CS) to weigh in to the balance, considerations of whether the density and scale of development are sustainable, whether the location is otherwise sustainable and whether there are relevant infrastructure constraints. In relation to the instant appeal it is submitted that all of these factors weigh in support of the appeal proposal.
- 7.244. Further, as set out within the Appellant's closing submissions at paragraphs 191-198, the housing figures within RA1 and DW1 are expressly not a cap on development and it is submitted that an additional 32 dwellings would not prejudice the broad spatial strategy set out within DW1 as it is in essence a *de minimis* addition to the Rural Areas which is incapable of materially affecting the Council's spatial distribution strategy.

#### Response to other parties' submissions

- 7.245. Neither the Parish Council's nor BANES's submissions are on point here. They neither individually nor collectively provide the Secretary of State with any assistance as to the approach to be taken to the NP or the weight to be attached to its policies for the purposes of this appeal.
- 7.246. The submissions of BANES merely confirm what is set out above, i.e. that the NP has reached the referendum stage (para ii) and as drafted contains no site-allocation policies (para iii). BANES's submissions do not comment on the weight to be attached or the position in light of NPPF 49.
- 7.247. The submissions made by the Parish Council also do not address the application of NPPF 49 nor the weight which ought to attach to SSHP01/03 in the absence of a five year supply.
- 7.248. The Parish Council submissions proceed upon the erroneous assumption that the Council can demonstrate a five year supply of housing land, the Parish

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<sup>162</sup> See Richard Walker App 1 199/1159 dwellings; para 5.12 of the Core Strategy page 88

<sup>163</sup> See para 84 of Woodcock

Council also adopts the flawed disaggregated approach to the calculation of supply taken by Inspector Hill and the subject of the Appellant's legal challenge. For the reasons set out above, this was not an approach properly open to Inspector Hill nor is it properly open to the Secretary of State to adopt such an approach.

- 7.249. The Parish Council focuses on the perceived conflict with the NP and SSHP01/03 in particular. However, for the reasons set out above, this conflict ought to be given little or no weight in the determination of this appeal.

### **Overall Conclusions on Stowey Sutton Neighbourhood Plan**

- 7.250. Inspector Hill made a clear finding, after hearing a considerable amount of evidence, that BANES could not demonstrate a five year supply of housing land within the HMA. However, the Inspector then did not go on to apply the natural consequences of such a finding by applying NPPF 49 and 14 to the determination of the appeals in relation to the Boxbury Hill and Paulton Sites. This was an erroneous approach and is the subject of a legal challenge.
- 7.251. The Secretary of State is therefore urged to properly apply NPPF 49 and 14 to the determination of the Bishop Sutton appeal. Specifically, this involves an application of NPPF 49 to the relevant policies of the NP, SSHP01/03 and a consequent finding that these policies are (as with similar district level policies HG4, HG10, DW1 and RA1) out of date and as they are no more than restated settlement boundary policies should be afforded no weight.
- 7.252. Paragraph 14 provides the relevant test for the overall determination of the appeal. In light of the agreement by the Council as to the sustainability of the site and the lack of any technical or development control reasons for refusal there are no considerations capable of significantly and demonstrably outweighing the benefits of much needed additional affordable and market housing.
- 7.253. Even if there is a five year supply, for all the reasons set out above including the fact that the appeal proposal represents sustainable development permission should nonetheless be granted.
- 7.254. Accordingly, it is submitted that planning permission ought to be granted for the Site.

## **8 POINTS RAISED BY INTERESTED PERSONS AT THE INQUIRY**

- 8.1. The Chairman of Stowey-Sutton Parish Council stated that the Parish Council supports plan-led growth. BANES CS indicates that the village should receive growth of "around 50" dwellings during the currency of the Core Strategy. The village has not had, and is not allocated to receive, any enhancements to its infrastructure to enable it to accommodate a higher level of growth.
- 8.2. The parish council is disturbed that the 5-year housing land supply situation should have been challenged through the lodging of this appeal only 10 days after the Core Strategy had been adopted. This is seen to be far too early to want to challenge the land supply position, and the developer should have waited until there had been a formal review of the land supply position.

- 8.3. The Chairman noted that Bishop Sutton is surrounded by Green Belt and by land categorised as an Area of Outstanding Natural Beauty (AONB).
- 8.4. The local BANES Councillor noted that the village is close to the AONB, and that development here would harm it. The site is also close to the Chew Valley Lake Special Protection Area with significant value for birds and wildfowl. There are also bats seen in this locality. That is, the scheme has potential to harm biodiversity and to harm the water quality of the Chew Valley Lake.
- 8.5. The Council operates a local connections policy for affordable housing. Although there have been up to 120 applications for affordable housing in the village, only 4 were seen to be eligible under the policy. That is, the village would be a poor location for general housing need.
- 8.6. It was also claimed that the school is over-subscribed at the moment and the housing growth currently under construction in the village may mean that pupils will have to be taken to schools elsewhere. Public transport in the villages offers a regular bus service to Bristol, but only weekly to Bath, and hence it does not represent a sustainable location for commuting.
- 8.7. A local resident believed that, contrary to the formal consultees' response, the village school is full, broadband speed is slow, water supply suffer leakages and the electricity supply is vulnerable to power cuts, there is no general practitioner in the village and there is no chemist. The proposed development here will significantly add to the numbers of new residents and, although the villagers are not unwelcoming, it would be difficult to successfully integrate such a large number of new residents into the social fabric of the village. The village is not, therefore, well placed to receive and support additional population growth. The local resident supported the previously expressed concerns about the possible impact of further development on the wildlife interest hereabouts.
- 8.8. Concern was expressed that a permission for the appeal scheme could be seen as a precedent to ignore the HDB and the CS. It was thought that infilling within the HDB would be sufficient to meet the village's needs. A huge number of additional new houses would upset the social balance of the village.

## **9 WRITTEN REPRESENTATIONS**

- 9.1. Prior to the inquiry, four written representations from interested persons were sent into The Planning Inspectorate in response to publicity for the appeal. These are contained in the red folder on the appeal file.
- 9.2. The points raised in the written representations generally reflect the concerns voiced by interested persons at the inquiry:
  - permission has already been granted for two significant housing development for 41 and for 30 houses. This is a major change for the village which will change the quality of life for this small country village.
  - local schools are at capacity
  - social facilities and amenities are no sufficient for additional population

- the bus service is infrequent and it is only practical to access Bristol by bus
  - land around the appeal site has suffered flooding
  - access to the site is via a single road and, with residents parking on that road, access for emergency service vehicles will be hindered.
- 9.3. Another local resident is concerned about maintenance of the right of way and the adjacent strip of land. Concern was also expressed about disturbance to residents along Cappards Road during the construction phase for the scheme.
- 9.4. Subsequent to the close of the inquiry, Stowey-Sutton Parish Council wrote to The Planning Inspectorate in response to the decision of the Secretary of State to recover determination of the current appeal. The parish council's letter, dated 7 July 2015, is Document PI 01.
- 9.5. The parish council note that, as noted at paragraph 216 of NPPF, because the SSNP has been scrutinised at an examination, it can now be given weight in the determination of this appeal.
- 9.6. The parish council consider that BANES Council is able to demonstrate that it has a five-year supply of housing land. The parish council agree with the views expressed in the Appeal Decisions issued for the other two appeals heard at this same inquiry<sup>164</sup> that to permit significant growth in excess of the current land supply situation in the Policy Area outside Bath would undermine the principles of sustainable development set out in the Core Strategy.
- 9.7. The parish council point out that the SSNP Examiner notes that the parish has exceeded its housing requirement as set out in the Core Strategy. The Examiner has accepted that Stowey Sutton has already seen development commence in excess of 150% of the "around50" new homes allocated to Policy RA1 settlements in the BANES CS.
- 9.8. The plan and the HDB given in Policy SSHP01 are seen to be in general conformity with the strategic policies. Furthermore, the SSNP continues to provide for sustainable growth, with additional infill development, within the HDB throughout the remainder of the CS period to 2029.
- 9.9. The parish council point out that appellant's sole argument in relation to the current appeal was that BANES could not demonstrate a five year housing land supply.

## **10 CONDITIONS AND SECTION 106 OBLIGATION.**

- 10.1. Suggested planning conditions were discussed at the inquiry. Were the appeal to be allowed I consider that, subject to minor rewording, the draft conditions would meet the tests given at paragraph 206 of NPPF. The suggested conditions are set out in the Appendix to this Report.
- 10.2. No reasons were put forward for imposing anything other than the usual time limits for the commencement of development (Conditions 1–2). In the

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<sup>164</sup> APP/F0144/A/14/221496 and APP/F0144/A/14/2215930

interests of providing a good standard of construction and clean access to each of the dwellings it is reasonable to require details of the roads, turning and parking areas to be approved by the local planning authority and that the roads and footpaths serving each new dwelling are completed to a basic standard before it is occupied (Conditions 3-4).

- 10.3. To minimise disruption to nearby residents and to ensure that the local roads are kept clean and free of mud and debris during construction it is reasonable to require the preparation of a Construction Management Plan (Condition 5). It is also reasonable to expect any off-site damage to roads approaching the appeal site, and attributable to the appeal development, to be made good as necessary (Condition 6). In a similar vein, it is reasonable to require the preparation of a Construction Ecological Management Plan, to minimise disturbance to local wildlife interests during the construction phase (Condition 11).
- 10.4. In order to safeguard the locality from any increased risk of flooding, and to ensure that the development can be properly drained, it is necessary to require submission of details of the drainage strategy for approval by the local planning authority before the commencement of development (Condition 7).
- 10.5. There is the possibility that archaeological remains may be found on the site. In which case it is reasonable and necessary to require that the development takes place in accordance with an agreed scheme of archaeological investigation and recovery. (Conditions 8-9).
- 10.6. The appeal site is on the rural edge of the village where it is necessary to safeguard as much as possible of the existing tree and hedge planting (Condition 12). Thereafter, to ensure that the retained planting is properly safeguarded during the construction phase, it is necessary to require compliance with a Detailed Arboricultural Method Statement with Tree Protection Plan (Condition 13). Thereafter, it is reasonable to ensure that the new landscape planting and wildlife habitats are managed and maintained in accordance with an agreed plan (Condition 10).
- 10.7. A completed planning obligation in the form of an Unilateral Undertaking made under Section 106 of the Town and Country Planning Act was submitted (Document EWH 17).
- 10.8. Subsequent to the close of the inquiry the Council has published its CIL Schedule. Several of the items included in the proffered planning obligation are now covered by the Council's CIL Schedule and hence, in accordance with CIL Regulation 123, these are matters which should be deleted from the planning obligation. These matters are to be deleted as specified in the exchange of emails dated 7–12 August 2015 (Document PI 06) and the accompanying Note from Ian Jewson Planning. That is, these offered contributions would not be necessary to make the development acceptable in planning terms because they are already included in the Council's CIL.
- 10.9. The planning obligation also includes an undertaking by the developer to pay the Council's costs of monitoring the implementation of each of the deeds. A contribution of this kind was found to be unlawful by the High Court and, on



the face of it, the circumstances appear to be similar in this appeal<sup>165</sup>. In which case, this too should be deleted from the planning obligation.

- 10.10. However, the submitted obligation includes a 'blue pencil' clause (Clause 9) which provides that, should any of the payments be seen to be incompatible with the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations (CIL Regulations), then that invalidity should not affect the enforceability of the remaining provisions of the deed. That is, should the appeal be allowed, I am satisfied that, subject to striking out the matters now duplicated in the CIL and the requirement to pay the Council's monitoring costs, the obligation would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. That is, it would meet the three tests given at paragraph 204 of NPPF.
- 10.11. It is agreed between the Council and the Appellant that none of the contributions that would remain in the planning obligation following deletion of the matters noted above, would be contributions which have also been funded by separate Section 106 contributions. That is, the limitations on pooling of contributions from separate planning obligations towards a project would not apply.

Richborough Estates

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<sup>165</sup> Oxfordshire County Council v Secretary of State for Communities and Local Government, Cala Management Limited, William Roger Freeman, Ross William Freeman, Julian James Freeman, Cherwell District Council: [2015] EWHC 186 (Admin).

## 11 CONCLUSIONS

### Main Considerations

- 11.1. Taking into account the reasons for refusal, the evidence given at the inquiry and the written representations, there are two main considerations to be addressed in this appeal. These are:
1. Whether there is a 5-year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the directions for growth and the release of housing sites.
  2. Whether granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy, having regard to the scale and distribution of development.
- 11.2. Each of these main considerations is discussed in turn below. The numbers in square brackets [*n.nn*] are references to preceding paragraphs in this Report.

### Introduction

- 11.3. As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and acknowledged at paragraphs 11.12 and 196 of NPPF, the starting point for determination of this appeal is to consider whether the proposed scheme accords with the development plan policies. The development plan for this area comprises the Bath & North East Somerset Core Strategy (CS), and saved policies of the Bath & North East Somerset Local Plan 2007 (BANESLP).
- 11.4. The appeal was lodged in April 2014; that is, prior to the adoption of the CS. Subsequently, the CS was adopted in July 2014 (Core Document CD03) [6.10]. The inquiry was held in January and February 2015 and the considerations below have regard to the adopted CS policies as they apply to the appeal scheme.
- 11.5. The BANESLP is included as Core Document CD 05. The relevant policies in this appeal are SC.1 (Settlement Classification - page 36), HG.4 (relating to Housing Development Boundaries - page 101), HG.10 (development outside Housing Development Boundaries - page 108) and NE.1 (landscape character - page 159). The Proposals Map includes as Inset 8 a detailed plan for Bishop Sutton, identifying the Housing Development Boundary (HDB) for the village.
- 11.6. The Stowey Sutton Neighbourhood Plan (Document PI 02) is currently in preparation [3.3] and has reached a relatively advanced stage. Policy SSHP01 establishes that a HDB will be set for the village. Figure 8 of the Plan shows the HDB: this is largely the same as the HDB set in the BANESLP, but adjusted to include two sites on the edges of the village which have been granted planning permission. The appeal site is immediately adjacent to – but outside – the SSNP HDB.

### **5-year Housing Land Supply**

- 11.7. The primary development plan document in this appeal is the CS. Policy DW1 (page 17) sets out the basic structural objectives for the plan. For the purposes of this appeal the factors which are most relevant are:
- that Bath is seen to be the primary focus for economic development (DW1 1 a)
  - that development in the rural areas is located at settlements with a good range of local facilities and with good access to public transport (DW1 1 d)
  - there should be a net increase in the supply of housing land of around 13,000 homes (DW1 2 b)
- 11.8. For reasons explained in the supporting justification for Policy DW1, the distribution of housing sites across the district is divided between five Policy Areas. The justification for this is that Bath is seen to be the primary focus for new development, that a balance should be achieved in the Somer Valley Policy Area between jobs and houses so as to minimise the need for out-commuting from communities in the valley, and to permit sufficient housing in the Rural Areas so as to meet local needs in the main settlements. That is, for reasons of supporting a sustainable pattern of development, the CS is based upon a strong rationale for directing growth at appropriate levels or proportions into the various Policy Areas.
- 11.9. The spatial strategy is summarised at section 1.26 (page 13 *et seq*) paragraph 1.26g explains the spatial distribution of housing across the District and Table 1B (page 15) gives the distribution of the 12,960 (ie "about 13,000) housing requirement between the five Policy Areas around which the policies of the Plan are structured. One of the policy areas is the Rural Areas Policy Area, in which Bishop Sutton is located.
- 11.10. Section 5 of the Plan (page 87) explains the strategy for the Rural Areas Policy Area. Paragraphs 5.13-5.16 (page 89) sets out the Policy Framework. This is, in essence, to direct appropriate levels of growth to the most sustainable villages, with a general expectation that 1,120 homes and 500 jobs would be required in this policy area. It is relevant to note that the figure of 1,120 homes includes existing commitments. That is, there is no need for more than 250 new planning permissions through to 2029 in the Rural Areas to meet the expectations of Policy DW1.
- 11.11. Paragraph 5.21 explains the rationale for considering development of around 50 dwellings in villages which meet the criteria set out in Policy RA1 (page 91). Bishop Sutton is regarded as a village which falls within the consideration of Policy RA1.
- 11.12. Because of previous under-delivery of housing in the Housing Market Area, the CS accepts that, for the first five years of the plan's period, housing land supply requirements have to be increased by 20% in order to comply with paragraph 47 of National Planning Policy Framework (NPPF) which looks for a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.

- 11.13. At the inquiry the Council put forward the latest iteration of its Strategic Housing Land Availability Assessment (SHLAA) to support the contention that there is a supply of housing land which meets the expectations of the CS [6.20(6), 7.26]. The Appellants brought forward evidence to challenge the robustness of the SHLAA, and sought to argue that, because some sites may not be available, or that the delivery of some sites may only come forward at a slower pace than that envisaged in the SHLAA, the Council cannot demonstrate that there is a full 5-year supply in accordance with the expectations of the CS [7.48 - 7.135].
- 11.14. As noted above, the appeal was lodged before the CS was adopted, at a time when the land supply position may have been uncertain. However, in June 2014 the Inspector conducting the Examination into the CS found that, on the evidence available to him, the Council did have a land supply which would meet the expectations of the CS and that the plan could be found sound [6.12]. The CS was subsequently adopted 10 July 2014 [6.10]. Before the plan had been formally adopted, The Planning Inspectorate had agreed to co-join this appeal with two others, on the basis that they all included a challenge as to whether there was a 5-year supply of housing land [1.1].
- 11.15. It was argued at the inquiry that persisting with the appeal was unreasonable; that an Inspector had heard evidence at the Examination and had concluded that there was a 5-year land supply. In which case there was no substance to this aspect of the Appellants' arguments [6.13]. On the face of it, it must have been enormously frustrating for the Council, having only just received an endorsement from a Planning Inspector that it had a 5-year land supply, to immediately be placed in a position to have to defend that in detail at a Section 78 planning appeal inquiry. However, the Appellants are entitled to make a planning application and to take the case to appeal if they consider the refusal of planning permission to be unwarranted.
- 11.16. Paragraph 47 of NPPF implies that the supply situation may only have to be reviewed on an annual basis. Since the close of the inquiry Planning Practice Guidance (PPG) has been revised to add weight to that view<sup>166</sup>. However, neither NPPF nor the PPG suggests that the supply figures cannot be challenged or reviewed at any time. Indeed, paragraph 3-030-20140306 of PPG advises that it is necessary to have an identified 5-year housing land supply at all points during the plan period. Whilst it is not the role of the decision maker in this appeal to challenge the credibility of what was discussed at the CS Examination, it is not unreasonable for the Appellants to seek to ensure that the information is up to date and that the expectations of the NPPF and PPG can be met [7.29].
- 11.17. At the inquiry the Council effectively acknowledged weaknesses in the land supply position presented at the local plan Examination by presenting a new version of the SHLAA. Furthermore, the Council accepted that not all of the sites it had listed in the latest version of the SHLAA would come forward as shown [7.48 - 7.50]. Some sites may not come forward at all because of difficulties in achieving access, other sites have changed ownership, and the delivery of some sites may be slower than expected on account of the time

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<sup>166</sup> Planning Practice Guidance ID 3-033-20150317

taken to get full planning permission, or because of delays incurred in transferring ownership to active housing developers.

- 11.18. In considering the land supply in the Housing Market Area, the evidence at this inquiry looked particularly at sites in the Bath, Keynsham and Somer Valley Policy Areas [7.51 - 7.134]. There was no exploration of sites in the SHLAA for the Rural Areas Policy Area. Indeed, there was no dispute between the Council and the Appellants about the housing land supply in the Rural Areas Policy Area.
- 11.19. It is not necessary to go through in detail the trajectory assumed by the Council for all of the sites queried by the Appellants at the inquiry. For the purposes of this section of the Report it is sufficient only to note that the Council conceded - albeit reluctantly - that the numbers of sites which might come forward should be reduced by 538, bringing the supply figure down from 5,945 to 5,407 [6.20(7)]. The figure may also be further reduced if some, or all, of the potential problems identified by the Appellants on other sites across the District were to materialise. Indeed, the Appellants put forward the view that the overall supply may be as low as 4,589 [7.135], compared to the Council's original contention that the supply figure is as high as 5,945 [6.20(7)].
- 11.20. However, those figures are for housing land supply across the District as a whole. At the inquiry it was agreed by the witnesses for the Council and for the Appellants that, for the reasons discussed at paragraph 11.8 above, it is reasonable to consider the distribution of those figures against the apportionment between the Policy Areas set out in Policy DW1 [7.187]. Of the 13,000 houses required over the plan period, Policy DW1 and Table 1B of the CS apportions 7,020 to Bath (54%), 2,150 to Keynsham (16.5%), 2,471 to Somer Valley (19%), 1,120 to Rural Areas (8.5%) and 200 to the Whitchurch fringe of Bristol (1.5%).
- 11.21. Translating these into annualised figures over 18 years (2011 – 2029) gives:

**TABLE 1 – Basic annual housing need by Policy Area**

<i>Policy Area</i>	<i>Core Strategy Total</i>	<i>Annual need</i>	<i>% of 13,000 CS total</i>
Bath	7,020	390	54.0%
Keynsham	2,150	120	16.5%
Somer Valley	2,471	137	19.0%
Rural Areas	1,120	62	8.5%
Whitchurch	200	11	1.5%
TOTALS	12,961	722	

- 11.22. This annual need figure then has to be multiplied up to give a 5-year need figure, and to which has to be added a proportion of the agreed shortfall (608) [7.135] to give an adjusted 5-year need, which itself has to be increased by 20% to provide the buffer looked for by paragraph 47 of NPPF

and acknowledged in the CS. This results in the supply figure which is shown in Table 2 below:

**TABLE 2 – Housing supply by Policy Area**

<b>Policy Area</b>	<b>Annual need</b>	<b>x 5 yrs</b>	<b>+ % of shortfall *</b>	<b>Basic 5 year need</b>	<b>+20%</b>	<b>Supply figure</b>
Bath	390	1,950	329	2,279	456	2,734
Keynsham	120	600	101	701	140	814
Somer Valley	137	685	115	800	160	960
Rural Areas	62	310	53	363	72	436
Whitchurch	11	55	10	65	13	78
<b>TOTALS</b>	<b>722</b>	<b>3,600</b>	<b>608</b>	<b>4208</b>	<b>841</b>	<b>5,022</b>

\* % taken from distribution of growth between Policy Areas given at Table 1 above.

- 11.23. It should be noted at this point that the 608 shortfall figure is factored in to the CS's trajectory of need. Both parties to this appeal agree that the Council has underperformed in the past, and it is relevant to add the 20% buffer to the CS base annual figure. This approach to calculating the supply figure is not a matter of dispute between the parties.
- 11.24. Taking the supply figure and setting this against the Council's SHLAA figure for each Policy Area, as given in Table 15 of Mr Harbottle's evidence, and adjusted to take account of the concessions made at the inquiry (as set out in Inquiry Document EWH 12) gives the distribution set out below:

**TABLE 3 – 5-year housing supply in Policy Areas as accepted by BANES**

<b>Policy Area</b>	<b>Supply figure</b>	<b>Annual supply</b>	<b>Adjusted SHLAA figure</b>	<b>% of supply in SHLAA</b>	<b>Deficit /excess</b>	<b>Years' supply</b>
Bath	2,734	547	2,052	75%	-682	3.75
Keynsham	814	163	1,185	146%	+371	7.27
Somer Valley	960	192	1,399	146%	+439	7.29
Rural Areas	436	87	646	148%	+210	7.43
Whitchurch	78	16	125	160%	+47	7.81
<b>TOTALS</b>	<b>5,022</b>	<b>1,004</b>	<b>5,407</b>	<b>107%</b>	<b>+385</b>	<b>5.38</b>

- 11.25. Table 3 shows that, using the figures for land supply (adjusted as *per* concessions made at the inquiry) all of the Policy Areas except Bath can demonstrate more than a 5-year supply of housing land. The overall position is that there is 5.38 year's supply across the District. Therefore, on the basis of the concession figures accepted at the inquiry and having regard to the advice given at paragraph 49 of NPPF, because the Council can demonstrate

a 5-year supply of deliverable housing sites, it is not appropriate to consider that the relevant policies for the supply of housing are out of date.

- 11.26. It could be acknowledged that preparing the SHLAA is not an exact science, and that it relies upon assumptions and predictions that may only be informed speculation at the time it is drawn up. The SHLAA which was presented at this inquiry had seemingly not been open to testing at Examination, nor had it been independently reviewed. In which case, it is not possible to be fully confident that it presents a robust trajectory, based on up-to-date and sound evidence, as envisaged at paragraph 3-033 of PPG. In any event, as acknowledged above, circumstances change and the likely supply assumptions can change almost unpredictably as new sites come forward and resolving problems on other sites may become either easier or more difficult. In which case, and without the benefit of a wider discussion involving more of the stakeholders who have a role in the housing market area about the assumptions and conclusions of the SHLAA, it may not be realistic to conclude authoritatively that the figures given in Table 3 above are determinative.
- 11.27. Taking the (arguably) more pessimistic view set out by the Appellants in Mr Harbottle's evidence, even if there is an overall District-wide deficit in housing land supply, the situation remains that there is an excess of supply in four of the five Policy Areas, with only Bath showing a significant deficit. This scenario is set out in Table 4 below.

**TABLE 4. 5-year housing supply in Policy Areas using Appellants' figures in Mr Harbottle's Table 15**

<i>Policy Area</i>	<i>Supply figure</i>	<i>Annual supply</i>	<i>Supply available</i>	<i>% of supply figure</i>	<i>Deficit /excess</i>	<i>Years' supply</i>
Bath	2,734	547	1,601	59%	-1,133	2.92
Keynsham	814	163	921	131%	+107	5.65
Somer Valley	960	192	1,296	139%	+366	6.75
Rural Areas	436	87	646	148%	+210	7.43
Whitchurch	78	16	125	160%	+47	7.81
TOTALS	5,022	1,004	4,589	92%	-403	4.57

- 11.28. Some of the doubts raised by Mr Harbottle over progress on two of the MOD sites in Bath (Warminster Road [7.65-7.72] and Foxhill [7.58- 7.64]) may be overly pessimistic in view of the recent decisions made by the Council to grant planning permission [6.20(7)] (see Documents EWH 13 and BANES 07). But this may be countered – at least in part - by the fact that Paulton House in Midsomer Norton [7.124-7.127] was, at the time of the inquiry, being marketed for offices rather than for conversion into flats, and therefore the 58 units envisaged there in the SHLAA may not come forward.
- 11.29. The argument then remains, if the situation is as set in Table 4 with an overall deficit in housing land supply, paragraph 49 of NPPF says that the policies for the supply of housing should not be considered up to date. If this

were the situation, then the circumstances set out at the fourth bullet point of paragraph 14 of NPPF are brought into play. This requires that planning permission should be granted for sustainable development unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole”.

- 11.30. Even if the scenario set out at Table 4 above were to be corroborated by means of a wider discussion which involved more of the relevant stakeholders, and that there is indeed an overall deficit, then in order to make up that shortfall the question arises of whether it is appropriate to grant planning permissions (which might be otherwise acceptable in all other respects) to address that shortfall in locations which could skew the concept of a sustainable distribution of growth which is embodied in Policy DW1.
- 11.31. Drawing these points together on the first main consideration, from the evidence heard at this inquiry it can be concluded that the SHLAA figures initially presented by the Council do not give a robust, reliable indication of the amount of planned or committed housing across the District. On the other hand, the figures presented by the Appellants are likely to be too pessimistic. However, the Appellants’ comments on many of the SHLAA sites suggest that, even with the Council’s concessions, there have to be continuing doubts over the trajectory presented by the Council and it would be reasonable to accept that the Council cannot confidently demonstrate that there is a 5-year supply of developable housing sites across the District as a whole. Nevertheless, in both of the situations shown in Tables 3 and 4 above there is more than a 5-year supply of housing land in all of the Policy Areas except Bath.

***Whether granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy, having regard to the scale and distribution of development.***

- 11.32. Paragraph 17 of NPPF sets out the core planning principles. The first of these is that planning should be genuinely plan-led. In the circumstances of this appeal this should be seen as being of paramount importance. At the time of the inquiry the Core Strategy had been adopted less than a year previously and it would be overly critical – if not churlish – to so quickly regard such a recently adopted document as being irrelevant. As noted at paragraph 11.8 above there are rational reasons supporting the principle set out in Policy DW1 to promote a sustainable distribution of development across the District for housing land supply, divided amongst the five Policy Areas.
- 11.33. For the purposes of this appeal – which relates to a site in the Rural Areas Policy Area - the figures given in both Table 3 and Table 4 above show that there is more than a 5-year supply of housing land. That is, on the face of it, there is no urgent necessity to increase the supply of housing land in the Policy Area.
- 11.34. On the trajectory for the Rural Areas there are planned sites or commitments for 1,159 dwellings at present, and adding the 32 proposed at the appeal for Sutton Bishop, would bring the total to 1,191 [7.186 - 7.187]. This would be 71 above the indicative figure of 1,120, or a 6% excess.



- 11.35. In principle, an excess of perhaps up to 10% might not unduly skew the overall target in any of the Policy Areas, but these figures are for the supply over the whole of the plan period. If the appeal scheme was to be allowed, this would result in 678 houses permitted or otherwise planned for up to 2019 (60% of the indicative figure). Allowing for the fact that the 20% buffer (72) which has been brought forward into the current 5-year land supply should be subtracted from the supply for the remainder of the period<sup>167</sup>, this would leave only 370 of the plan's 18-year requirement to meet the needs of the last 10 years of the plan in this Policy Area.
- 11.36. This would mean that 67% of the indicative allocations would have been committed within the first 8 years (44%) of the plan period. Nothing was put forward at the inquiry to demonstrate that the current commitments would not, or could not, be completed. This would mean that within the policy area the rate of growth would be significantly biased towards the beginning of the plan period. If all permissions were to be built-out then this could lead to the situation where greater restraints may have to be applied towards the end of the plan period, leaving the plan potentially unable to respond appropriately to future – and as yet unforeseen – needs. That would not be consistent with the plan > monitor > manage principle underlying the local plan system.
- 11.37. More to the point, the corollary of allowing a greater proportion of housing development in the Rural Areas solely to make up the possible overall shortfall across the District, would undermine or dilute the strategy of directing the main initiatives for growth to Bath and accommodating a smaller proportion of additional housing in the other Policy Areas - where some degree of limitation or restraint is seen to be appropriate for reasons of achieving a balanced, sustainable growth strategy.
- 11.38. That is, even if the housing supply situation is as set out at Table 4 above, permitting additional development in the Rural Areas at this time would not be compliant with the core principle of NPPF which looks for a plan-led planning system. This is a principle which carries great weight. With it being, at the time of the inquiry, less than a year since the CS was adopted, it is far too early to accept that its policies for apportioning and distributing growth are out of date and that it would be contrary to the NPPF first core planning principle to permit a dilution of its strategy so early in the plan period by allowing pressure to be diverted away from the Bath Policy Area. Information which has become available since the adoption of the CS suggests that it does not fully sit comfortably within the expectations of paragraph 49 of NPPF with regard to confidently demonstrating a 5-year housing land supply. However, it is not the overall strategy which is out of date, but the assumed delivery rates or the 'fit' with the sites identified in the SHLAA which are in need of up-dating. For the strategy to remain relevant and credible this would have to be addressed within the Bath Policy Area – not across the plan area as a whole.
- 11.39. It being so early in the plan period it would be reasonable to come to the view that it would not be correct to allow additional development outside the Bath Policy Area because the consequence of this would lead to distortion of

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<sup>167</sup> See NPPF paragraph 47 on how to factor in the 20% buffer across the plan period.

the sustainability balance embodied in the principal component of the CS's strategy. That is, it would not be in accordance with the core planning principles of NPPF to accept that the deficit in housing land supply in the Bath Policy Area automatically justifies permitting additional development elsewhere across the District, and particularly in locations where there may be other cogent objections on grounds of sustainability.

- 11.40. In terms of the policy set out at paragraph 14 of NPPF, permitting significant growth in excess of the current land supply situation in the Policy Areas outside Bath would undermine the principles of sustainable development set out in the CS. To do that so early after the adoption of the CS would significantly harm the value and purpose of the detailed, lengthy and collaborative plan-making process which has taken account of the views of local people in wishing to shape their surroundings. This would undermine confidence of developers and residents in the plan-making process, which would constitute an adverse impact that would significantly and demonstrably outweigh the benefits of topping up the housing supply by permitting further development in the Rural Areas Policy Area.
- 11.41. Policy RA1 of the CS makes provision for some housing growth in the larger villages in the Rural Areas Policy Area. Bishop Sutton is one of the villages where further development may be seen as appropriate, having regard to the availability of services locally. Paragraph 5.21 of the CS gives an indicative limit of 50 dwellings in each of the villages which meet the RA1 criteria.
- 11.42. Recent planning permissions (within the period covered by the Core Strategy) have been granted for 76 dwellings in Bishop Sutton [7.214]. That is, the indicative limit for additional development in the village has already been exceeded. The appeal scheme would bring that figure to 108 – more than twice the indicative level. Whilst the indicative limit need not be regarded as a cap [7.163], it has to be seen in the context of the objectives of the CS policies. The underlying strategic objective is to direct growth to locations which can be seen to be sustainable, in that there is a reasonable match between jobs and dwellings such as to minimise commuting for work purposes, and especially commuting by private car. No evidence was brought to the inquiry to show that new employment opportunities have been established in the village to match the amount of committed and proposed housing development.
- 11.43. The CS endorses the concept of Housing Development Boundaries (HDB) as a means of directing and concentrating growth to the most appropriate locations. The appeal site is outside the HDB for Bishop Sutton as shown in the BANESLP. The CS includes the opportunity for further development in the RA1 villages on sites adjacent to the HDB, but only where this will have been promoted through a Neighbourhood Plan. A Neighbourhood Plan is in preparation for Stowey Sutton parish – which includes Bishop Sutton - which seeks to draw the HDB around the present built-up area of the village plus the recently permitted development sites noted above [7.215]. It does not propose to include the appeal site [6.24].
- 11.44. The Neighbourhood Plan has advanced to the stage where it has been examined and, subject to modifications, considered to be in general conformity with the Core Strategy and it can progress to a Referendum (see

Document IP 04). Paragraph 216 of NPPF indicates that the emerging SSNP can be given weight in this appeal.

- 11.45. The Appellants contend that the SSNP has not been prepared so as to take into account the objectives the Secretary of State envisaged for Neighbourhood Plans, in that it is restrictive on the amount of growth considered acceptable, rather than being positive about promoting growth [7.211-7.216]. However, that line of objection to SSNP has yet to be settled through the courts (if a challenge is actually lodged on such grounds) [7.226]. Unless there are overriding considerations which would justify allowing more than the 50 dwellings in the village, given as the indicative acceptable level of growth figure the CS, the probability that the HDB in the SSNP will not be revised to include the site adds weight to the objection based on the scale of the approved and proposed additional development in the village representing unsustainable development.
- 11.46. With more than the indicative 50 dwellings having been granted permission already in the village, and more than a 5 year supply of developable housing land available in the Rural Areas Policy Area (see paragraph 11.33 above), there is no need to permit further development in Bishop Sutton to meet the objectives of Policy DW1 or RA1. In which case paragraph 14 of NPPF is not engaged, such that the HDB of Bishop Sutton should be regarded as out of date.
- 11.47. The Appellants argue that, because – in their view – there is not a 5-year supply of developable land then, applying paragraph 49 of NPPF, Policy SSHP01 should be regarded as out of date [7.227]. Even if it is accepted that the SSNP is not compliant with government thinking on the role and purpose of neighbourhood plans, it should be noted that this is not yet an adopted (or 'made') policy. That is, it is premature to say that Policy SSHP01 is 'out of date'. However, this line of argument could be seen as an extension of the Appellant's broader claim that the CS policies must be regarded as out of date if there is not a 5-year housing land supply. That is, in the Appellants' view, if the CS is out of date, then any other policy document which derives from it must also be out of date.

Site specific considerations for the appeal scheme

- 11.48. At a more detailed policy level, the proposed scheme would not meet the terms of Policies HG4 or HG10 of the Bath & North East Somerset Local Plan 2007 (BANESLP), in that – as discussed above - the development would not be appropriate to the scale of the settlement in terms of the availability of employment opportunities, and the dwellings are not being put forward as being essential for agricultural or forestry workers.
- 11.49. Paragraph 7 of NPPF sets out three dimensions to sustainable development. Having regard to the site and its surroundings, the scheme would not appear unacceptably obtrusive in landscape terms (that is, it would not conflict with the objectives of BANESLP Policy NE.1); it would be reasonably well assimilated as an extension of the existing pattern of built development hereabouts. Concerns were expressed by local residents over the potential impact of additional housing on local wildlife and the possible impact on the Chew Valley Lake nature conservation site, but such concerns are not corroborated by the agencies which are responsible for safeguarding the

water environment and nature conservation locally [8.4, 7.234]. Whilst these points might not be seen as environmental benefits, they would have a neutral environmental impact and thus the scheme could be regarded as not being in conflict with the environmental role of sustainability.

- 11.50. The scheme would not give rise to problems of highway capacity or highway safety. The local school can accommodate any additional pupils, subject to an appropriate contribution from the developer [7.234] through a payment in accordance with the Council's CIL. There would not, therefore, appear to be any significant problems in terms of overloading the existing community infrastructure of the village. However, without additional job opportunities in the village, additional houses would exacerbate the jobs : homes imbalance, which would increase the likelihood of people needing to commute out of the village for work purposes. This would not be compatible with the economic role of sustainable development.
- 11.51. It can be acknowledged that the scheme would bring social benefits of providing some 35% of affordable housing. Clearly the CS seeks to increase the supply of affordable housing and this component of the appeal scheme would correspond with one aspect of the social dimension of sustainable development. However, I do not see this as sufficient benefit to outweigh the conflict with the economic dimension. Added to this is the perhaps indefinable and conjectural concerns expressed over accommodating a large number of new residents into a relatively small settlement. The permitted and proposed schemes would increase the number of dwellings by about 20% in a relatively short space of time. There is the possibility that such a concentrated period of enlargement would lead to some difficulties in satisfactorily integrating the new households in to the community [8.7]. Whilst not an overriding consideration, it adds weight to the view that the proposed scheme cannot be regarded as representing sustainable development.

#### Conclusion on the second main consideration

- 11.52. Drawing together the above points, having regard to the scale and distribution of development, I come to the view that granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy, and would be contrary to the objectives of the BANESLP. I do not consider that the circumstances in this appeal represent material considerations which justify making a decision other than in accordance with the development plan. Accordingly, the appeal should be dismissed.

#### **Other Matters**

- 11.53. For the most part, concerns raised by interested persons either at the inquiry in person, or in the written representations, have been covered in the above discussions. I comment below on the matters not already addressed in this Report.
- 11.54. The proportion of local residents apparently qualifying for an affordable dwelling would, on the face of it, be far below the number which could be provided in this proposed scheme [8.5]. However, as one of the larger villages in the Rural Areas, Bishop Sutton may not be an inappropriate place

for a home needed by households living in the wider rural hinterland. Also, it is not clear if the local connections policy takes into account households currently in private rented accommodation but in receipt of housing benefit – who would be expected to be able to access affordable housing.

- 11.55. The Section 106 unilateral undertaking offers 35% affordable housing – 11 units of mixed sizes. CS Policy CP9 (CD 03, page 120) looks for 30% affordable housing for schemes of more than 10 houses in the rural parts of the District. In the case of the current appeal this works out to be 9.6 or, rounded up to whole numbers, 10 units. The offered proportion would therefore be above the policy requirement, but this cannot be seen as a justifying dismissing the appeal. Although 11 may be more than the number needed to meet the local connections criteria, this would not be in conflict with the CS policy, and it would not unduly skew the housing mix on the development.
- 11.56. Although in a rural location, Bishop Sutton is seemingly reasonably well provided with services for a settlement of this size [2.2]. No compelling evidence was brought to the inquiry to show that, taking account of the contribution for education purposes through a CNL payment, the village could not accommodate additional population in terms of the capacity of facilities and services [7.171].
- 11.57. Although close to the Chew Valley Lake SAC, the Mendip Hills AONB and the Bristol Green Belt [2.3, 8.4], none of the relevant agencies responsible for safeguarding nature conservation and landscape interests have expressed an objection to the proposed scheme [7.234].
- 11.58. The Appellants have pointed to other appeal decisions where a shortfall in deliverable housing sites has justified regarding a recently adopted Core Strategy as out of date [7.29 *et seq* and 7.141, 7.142, 7.144]. These cases do have, on the face of it, similarities to the current appeal, but only the Inspector's decisions were presented at the inquiry; I did not hear all of the evidence which led to the conclusions reached in those other cases. Those other cases were not in the same local authority area as the current appeal and were not being assessed in the context of the policies seen to be relevant in this appeal. That is, whilst those other cases show that it can be reasonable and justifiable to regard recently adopted CS figures as out of date, those other cases do not represent clear and inescapable precedents for the outcome of this appeal. Indeed, as the Appellants themselves acknowledge, each appeal has to be determined on its own merits [7.30].
- 11.59. The Appellants' assumption that the appeal would have been allowed if determination had not been recovered by the Secretary of State is simply conjecture [7.194]. A draft decision on the case has not been published nor forwarded to the Secretary of State.
- 11.60. The Appellants have raised concerns over the length of time it has taken to bring this appeal to a decision [7.194-7.197]. It is not appropriate for me to comment on procedural matters.

## Overall Conclusions

- 11.61. It is possible that the Council has a 5-year housing land supply. However, the evidence for this at this inquiry was not compellingly robust and, on the balance of probabilities, I come to the view that there is a shortfall in the 5-year housing land supply in the Housing Market Area. Accordingly, the expectations set out at paragraph 49 of NPPF come into play.
- 11.62. The question at this point is, whether Policy DW1 is a policy concerning the supply of housing land, or is it primarily a policy which sets out the quantum and distribution of the housing requirement? It does not seek to either identify or, alternatively, restrict the identification of individual sites or HDBs. That is, DW1 is not a site-specific policy seeking to regulate the release of sites for housing development. Restrictions such as HDBs are seen to be the role of subsequent local (placemaking) plans or neighbourhood development plans. It does, however, imply limitations over supply to the extent that indicative figures are given for each Policy Area; that is, there is an implied restriction on the amount of growth permissible in each Policy Area, albeit the DW1 figures are not to be seen as a cap or ceiling.
- 11.63. In this appeal whilst there is no fundamental disagreement between the parties over the quantum of housing required (the Appellants' witness' evidence on housing supply was based on the figures given in Policy DW1 as the requirement to be met), the basis of the dispute is over the availability of identified sites. In my view, DW1 is not obviously a policy seeking to restrict housing supply, albeit that the CS was adopted on the basis that it assumed a number of identified sites would be available to meet the requirement set out in DW1. In which case, Policy DW1 should not be seen to be out of date.
- 11.64. Nevertheless, even if DW1 is seen to be a policy controlling housing supply, for rational reasons of promoting sustainable development, the Housing Market Area requirement given in the Core Strategy is distributed across five Policy Areas and it is only in the Bath Policy Area that there is a shortfall in supply. In the Policy Area relevant in this appeal (Rural Areas) there is more than a 5-year supply of developable housing land.
- 11.65. Despite the shortfall of developable housing land in the Bath Policy Area, I do not consider that the Core Strategy can be considered to be out of date, and that paragraph 14 of NPPF is not engaged in the determination of these appeals in seeking to address the shortfall.
- 11.66. The policies of the Core Strategy are formulated around a strategy of distributing growth amongst locations where it has the greatest opportunity for supporting or creating balanced societies and economies. If there is a shortfall in housing land, which I consider there is, the shortfall ought to be made up in locations where the principles of sustainability can be met. That is, places in reasonable proximity to a range of services and employment, and which give the opportunity for the minimal use of private cars. This would not include Bishop Sutton. To locate an excessive number of new houses in Bishop Sutton would depart from the strategic thrust of directing growth to sustainable locations.

- 11.67. Local opinion, as expressed by those who spoke at the inquiry, and as argued in the Stowey Sutton Neighbourhood Plan, considers that, having regard to the indicative "about 50" given in the Core Strategy and the number of houses approved recently, the additional 32 houses proposed in the appeal scheme would be excessive [8.1-8.8]. Paragraph 50-001-20140306 of PPG says that "*blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided*". On the face of it, this appears to be the situation now promulgated in the emerging Stowey Sutton Neighbourhood Plan. However, that plan has been independently examined and found to be compliant with the Core Strategy. That is, there is seen to be evidence which supports the approach being put forward in the neighbourhood plan.
- 11.68. NPPF looks to promote a low-carbon economy and to direct growth to where the need for travel is minimised and where the use of sustainable modes of travel is maximised. Inevitably, such conditions are found in the larger settlements. Permitting growth in small villages which are at some distance from employment, larger shops and services and leisure facilities is not a strategy for sustainable development. The proposed scheme would bring additional housing to Bishop Sutton, but without any commensurate increase in opportunities for employment. That is, additional working age residents would inevitably have to find employment elsewhere, and which would largely involve travel by private cars. The same may be so for those wishing to follow a wider range of social, cultural and leisure interests.
- 11.69. Significantly exceeding the (albeit generalised and indicative) allocation of housing growth in the Rural Areas Policy Area would not represent sustainable development at the strategic level. As discussed above, I consider that granting planning permission for the proposed development would be contrary to the objectives of the Core Strategy, in that it would depart from the strategic thrust of directing growth to sustainable locations. That is, the proposed scheme would unacceptably prejudice the implementation of the Core Strategy.
- 11.70. Although there are positive aspects of the scheme, not least the 35% proportion of affordable housing being offered, I consider that the adverse impacts of approving the proposal would significantly and demonstrably outweigh the benefits. Accordingly the appeal should be dismissed.

#### **Alternative view on the arguments in this appeal.**

- 11.71. Having regard to the challenge lodged in the High Court<sup>168</sup> to the two Appeal Decisions issued for the other two cases heard at this same inquiry [7.201 - 7.210] the Secretary of State may consider that the above reasoning is flawed. That is, the Secretary of State may agree that the shortfall in the housing land supply across the Housing Market Area overall justifies regarding the Core Strategy and Policy DW1 as being out of date. In which case it would be necessary to consider whether the proposed development would give rise to harm locally. Even if the Secretary of State considers there is a 5-year land supply in the Housing Market Area, this does not preclude

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<sup>168</sup> Claim No. CO/3058/2015, dated 30 June 2015

granting planning permission for further development, subject to the proposed scheme being compliant with relevant development plan policies and representing sustainable development. The housing figures given in CS Policy DW1 are a generalised indication of the level of growth looked for in the Rural Areas, but the figures are not to be regarded as a cap [7.163].

- 11.72. The Council's reasons for refusal do not indicate a conflict with any other development plan policies. The Appellant has pointed out that the replies of the consultees at application stage did not consider that the proposed scheme would give rise to justifiable concerns over (amongst other matters) highway capacity and highway safety, landscape impact, ecological interests, flood risk and the capacity of local services and facilities (subject to a contribution to education provision) [7.234]. That is, if the Secretary of State does not agree that the principle of permitting additional housing in Bishop Sutton represents unsustainable development then, subject to the Secretary of State's views on the concerns expressed by local residents [8.7] there are no other substantiated objections on grounds of social, economic or environmental sustainability which would justify dismissing the appeal.
- 11.73. If the Secretary of State considers the appeal should be allowed then it would be necessary to attach planning conditions to the planning permission, as discussed at Section 10 above and as set out in the Appendix to this Report. The Secretary of State should also indicate, by reference to Section 10 of this report, which sections of the accompanying unilateral undertaking should not apply.

## **12 RECOMMENDATION**

- 12.1. I recommend that the appeal be dismissed.

*Geoffrey Hill*

INSPECTOR



## APPEARANCES

### For Bath and North East Somerset Council:

Mr M Edwards of Counsel                      Instructed by Bath and North East Somerset Council

#### ***He called:***

Mr Richard Walker BA(Hons) DipTP                      Planning Policy Officer

Mr Daniel Stone BSc MTCP MRTPI                      Senior Planning Officer

#### ***Not called to give evidence***

Ms Helen Hoynes                      School Organisation Manager

Mr Gary Lewis                      Acting Team Leader, Highways Development Control

Mr Andrew Chard                      Team Manager, Parks & Bereavement Service

### For the Appellants:

Miss Suzanne Ornsby QC                      Instructed by Ian Jewson Planning Ltd., (agent for the Appellants)  
*assisted by*

Miss Stephanie Hall of Counsel

#### ***She called:***

Mr Julian Harbottle MRICS                      Director: Savills (UK) Ltd.,

Mr Ian Jewson BA(Hons) DipTP MRTPI                      Director: Ian Jewson Planning

### Interested Persons:

Mr V Pritchard                      BANES Councillor

Mr K Betton                      Chairman, Stowey-Sutton Parish Council

Ms Sally Monkhouse                      Local resident

## DOCUMENTS

### CORE DOCUMENTS

*Ref              Document*

CD 01              National Planning Policy Framework

CD 02              Planning Policy Guidance

CD 03              Bath and North East Somerset Core Strategy (July 2014)

- CD 04 Report on the Examination into Bath and North East Somerset Council's Core Strategy (June 2014)
- CD 05 Bath and North East Somerset Local Plan (October 2007)
- CD 06 Bath and North East Somerset Planning Obligations Supplementary Planning Document (July 2009)
- CD 07 Bath and North East Somerset Placemaking Plan Launch Document (July 2013)
- CD 08 Bath and North East Somerset Placemaking Plan Options Document (November 2014)
- CD 09 Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
- CD 10 English Heritage - Seeing History in the View (May 2011)
- CD 11 English Heritage - The Setting of Heritage Assets (October 2011)
- CD 12 Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment Supplementary Planning Guidance (April 2003)
- CD 13 Valuing People, Place and Nature: A Green Infrastructure Strategy for Bath and North East Somerset (March 2013)
- CD 14 Paulton Village Design Statement Supplementary Planning Guidance (March 2001)
- CD 15 Paulton Conservation Area Character Appraisal Supplementary Planning Guidance (2003)
- CD 16 Bath and North East Somerset Home to School Transport Policy
- CD 17 Childcare Sufficiency Update - March 2014
- CD 18 Primary and Secondary School Organisation Plan 2013 - 2017
- CD 19 Strategic Housing Land Availability Assessment (November 2013), comprising:
- Findings Report
  - Appendix 1: Site Assessments and Plans
  - Appendix 2: SHLAA Housing Trajectory 2011 -2029
- CD 20 Strategic Housing Land Availability Assessment Housing Trajectory 20112029 (March 2014)
- CD 21 Changes to the Strategic Housing Land Availability Assessment Housing Trajectory between November 2013 and March 2014 (March 2014)
- CD 22 Strategic Housing Land Availability Assessment Findings Report (December 2014)
- CD 23 Strategic Housing Land Availability Assessment Housing Trajectory 20112029 (December 2014)
- CD 24 Bath and North East Somerset Settlement Classification (October 2009)

- CD 25 Inspector's Note - Progression of the Examination 2014 (ID/44)
- CD 26 Core Strategy Topic Paper 7 - Keynsham and Somer Valley Site Capacities and Delivery
- CD 27 Core Strategy Topic Paper 8 - Central Bath and River Corridor Site Capacities and Delivery
- CD 28 BANES Response to ID/7 - Issue 2 - SHLAA and Flood Risk
- CD 29 BANES Response to ID/7 - Issue 2 - Bath
- CD 30 BANES Response to ID/7 - Issue 2 - Keynsham
- CD 31 BANES Response to ID/25 - SHLAA Somer Valley
- CD 32 BANES Response to ID/45 - Windsor Gas Holder and Bath Flood Risk Management Project
- CD 33 Core Strategy Statement of Common Ground - Land adjoining Odd Down
- CD 34 Core Strategy Statement of Common Ground - Land adjoining Weston (Mr Perry and Crest Nicholson)
- CD 35 Core Strategy Statement of Common Ground - Land adjoining Weston (The Silverwood Partnership)
- CD 36 Core Strategy Statement of Common Ground - Land adjoining Weston (The Equestrian Centre)
- CD 37 Core Strategy Statement of Common Ground - Land adjoining East Keynsham
- CD 38 Core Strategy Statement of Common Ground - Land adjoining South West Keynsham
- CD 39 Core Strategy Statement of Common Ground - Land at Whitchurch (Horseworld)
- CD 40 Core Strategy Statement of Common Ground - Land at Whitchurch (Barratt Homes)
- CD 41 Core Strategy Statement of Common Ground - Land at Whitchurch (Sir Michael Gregory and Belinda Gregory)
- CD 42 Ouseley J, South Northamptonshire Council v Secretary of State and Barwood Homes: [2014] EWHC 570 (Admin)
- CD 43 Lindblom J, Bloor Homes v Secretary of State & Hinckley and Bosworth Borough Council: [2014] EWHC 754 (Admin)
- CD 44 Appeal Decision: Land Between Iron Acton Way and North Road, Engine Common (APP/P0119/A/12/2186546)
- CD 45 Appeal Decision: Land at the former Lypne Airfield, Aldington Road, Lypne (APP/L2250/A/13/2210752)

- CD 46 Appeal Decision: Land at Monger Lane, Midsomer Norton (APP/F0114/A/13/2199783), including:
- Site Location Plan
  - Landscape Strategy Plan
- CD 47 Appeal Decision: The Batch, Bishop Sutton (APP/F0114/A/13/2196478)
- CD 48 Appeal Decision: Land north of Upper Chapel, Launceston (APP/D0840/A/13/2209757)
- CD 49 Appeal Decision: Land off Nantwich Road, Tarporley (APP/A0665/A/11/2167430)
- CD 50 Appeal Decision: Land at Brookfield Farm, Hallfields Lane, Rothley (APP/X2410/A/11/2161715)
- CD 51 Appeal Decision: Land to the north of Fossey Gardens, Westfield (APP/F0114/A/13/2203361)
- CD 52 National Character Area Profile 118: Bristol, Avon Valleys and Ridges, Natural England (2013)
- CD 53 Landscape Assessment of Mendip District (May 1997)
- CD 54 Planning Case Officer's Report on Land at Cappards Road, Bishop Sutton for Development Control Committee on 12th February 2014
- CD 55 Planning Case Officer's Report on Land at Cappards Road, Bishop Sutton for Development Control Committee on 12th March 2014
- CD 56 Planning Officer's Delegated Report for Land at Boxbury Hill Midsomer Norton (13/04880/OUT)
- CD 57 Planning Officer's Delegated Report for Land at Abbotts Farm Close, Paulton (13/03547/OUT)
- CD 58 Stowey Sutton Parish Council Housing Needs Survey Questionnaire
- CD 59 Stowey Sutton Parish Council Housing Needs Survey Results
- CD 60 Stowey Sutton Parish Council Neighbourhood Survey Questionnaire
- CD 61 Stowey Sutton Parish Council Neighbourhood Survey Results
- CD 62 Lewis J., Cotswold District Council v Secretary of State and Fay and Son Limited: [2013] EWHC 3719 (Admin)
- CD 63 Mitting J., Save Britain's Heritage v Gateshead Metropolitan Borough Council: [2014] EWHC 896 (Admin)
- CD 64 Lang J., R(East Meon Forge and Cricket Ground Protection Association) v East Hampshire District Council and South Downs National Park Authority: [2014] EWHC 3543 (Admin)
- CD 65 HHJ Waksman QC., R(Hughes) v South Lakeland District Council: [2014] EWHC 3979 (Admin)
- CD 66 Gilbert J., Pugh v Secretary of State: [2015] EWHC 3 (Admin)

- CD 67 Kenneth Parker J., Colman v Secretary of State, North Devon District Council and RWE Npower Renewables Limited: [2013] EWHC 1138 (Admin)
- CD 68 Lang J., William Davis Limited and Jelson Limited v Secretary of State and North West Leicestershire District Council: [2013] EWHC 3058 (Admin)
- CD 69 Appeal Decisions:  
Land at Pulley Lane, Newland Road and Primslan Way (APP/H1840/A/13/2199085) and Land north of Pulley Lane and Newland Lane (APP/H1840/A/13/2199426)
- CD 70 Appeal Decisions:  
Land east of Springwell Lane, Whetstone (APP/T2405/A/12/2170192): Land east of Springwell Lane, Whetstone (APP/T2405/A/12/2170201) : Land off Countesthorpe Road and Springwell Lane, Whetstone (APP/T2405/A/12/2170207)
- CD 71 Appeal Decision: Land south of Broughton Road, Bambury (APP/C3105/A/14/2220513)
- CD 72 Appeal Decisions:  
Land to the north of Acland Park, Feniton, Devon (APP/U1105/A/13/2191905): Land to the west of Ottery Road, Feniton, Devon (APP/U1105/A/13/2197001): Land to the west of Ottery Road, Feniton, Devon (APP/U1105/A/13/2197002): and Land to the south of Station Road, Feniton, Devon (APP/U1105/A/13/2200204)
- CD 73 Draft Strategic Housing Land Availability Assessment Housing Trajectory 2011 -2029 (November 2014)
- CD 74 Appeal Decision: Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath (APP/R0660/A/13/2192192)

## **PROOFS OF EVIDENCE**

### **Housing Land Supply**

#### ***For Mr Richard Walker***

- HLS/BANES/RW/POE Proof of evidence
- HLS/BANES/RW/APP 1-7 Appendices to proof of evidence
- HLS/BANES/RW/SUM Summary proof of evidence

#### ***For Mr Julian Harbottle***

- HLS/EWH/JH/POE Proof of evidence
- HLS/EWH/APP Appendices to proof of evidence (in 2 volumes)
- HLS/EWH/SUM Summary proof of evidence

## **Residual land at Cappards Road, Bishop Sutton**

### ***For Mr Daniel Stone***

A/BANES/DS/POE	Proof of evidence
A/BANES/DS/APP 1-6	Appendices to proof of evidence
A/BANES/DS/SUM	Summary proof of evidence

### ***For Mr Gary Lewis***

A/BANES/GL/POE	Proof of evidence (including overall conclusions)
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### ***For Mr Andrew Chard***

A/BANES/AC/POE	Proof of evidence
A/BANES/AC/APP A-B	Appendices to proof of evidence

### ***For Ms Helen Hoynes***

A/BANES/HH/POE	Proof of evidence
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### ***For Mr Ian Jewson***

A/EWH/ IJ/POE	Proof of evidence
A/EWH/ IJ/APP	Volume of appendices to proof of evidence
A/EWH/ IJ/SUM	Summary proof of evidence

## **DOCUMENTS SUBMITTED DURING THE COURSE OF THE INQUIRY**

### ***For Bath and North East Somerset***

BANES 01	Bundle of copy emails relating to discussions on SHLAA sites submitted by Mr Walker.
BANES 02	Appeal Decision APP/F0114/A/14/2218780 – Stitchings Shord Lane, Bishop Sutton, Bristol BS39 5UB.
BANES 03	Appeal Decision APP/F0114/A/14/2217941 – Land at Ham Lane, Bishop Sutton, Bristol BS39 5UB.
BANES 04	Appeal Decision APP/Y3425/A/14/2217578 – Land between Ashflats Lane and A449 Mossnit, Stafford ST18 9BP.
BANES 05 i	Monuments Protection Programme: The Coal Industry. Recommendations for Protection (Step 4 Report) and possible inclusion of The Batch as a scheduled monument, submitted by Ms Waldron.
BANES 05 ii	Monuments Protection Programme - Site Assessment Old Mills Colliery Tip, submitted by Ms Waldron.
BANES 06	Supplemental proof of evidence on the meaning an application of the

words 'around' and 'balance' – put in by Mr Walker.

BANES 07 Draft Committee Minutes re: MOD Warminster Road and MOD Foxhill applications.

BANES 08 Cost Application.

***For the Appellants***

- EWH 01 Mr Harbottle's up-dated table of comments on SHLAA sites.
- EWH 02 Errata sheet for Mr Harbottle's proof of evidence.
- EWH 03 Replacement Appendix 8 to Mr Harbottles's proof of evidence.
- EWH 04 Enlargement of up-dated table of comments on SHLAA sites (Document EWH 01).
- EWH 05 Mr Harbottle's trajectory for deliverability of three appeal sites.
- EWH 06 Revised access drawing for Abbott's Farm Close – CMR/2.
- EWH 07 Appeal Decision APP/F0114/A/13/2208178 – Land at Greenlands Road, Peasedown St John, Bath.
- EWH 08 Consultation response relating to education provision for Peasedown St John application -31 May 2013.
- EWH 09 January 2015 Supplementary Statement of Common Ground re: Transportation Issues.
- EWH 10 i Local Plan Proposed Modification drawings relating to protected hillsides at Midsomer Norton.
- EWH 10 ii Contour lines at Boxbury Hill
- EWH 10 iii Comparisons of Visual Impact Assessment.
- EWH 11 Note on Employment /Housing Balance put in by Mr Jewson.
- EWH 12 Note on concessions made by Mr Walker on SHLAA sites – put in by Mr Jewson.
- EWH 13 BANES Committee Reports on planning applications for MOD Warminster Road and MOD Foxhill sites
- EWH 14 Grounds of Claim in relation to Stafford Town Appeal - CO/85/2015.
- EWH 15 Grounds of Claim in relation to Lympne Appeal – CO1479/2014.
- EWH 16 High Court Judgement: Dartford Borough Council [2014] EWHC 2636 (Admin).
- EWH 17 Section 106 Planning Obligation for Cappards Road site.
- EWH 18 Section 106 Planning Obligation for Abbott's Farm Close site.
- EWH 19 Section 106 Planning Obligation for Boxbury Hill site.
- EWH 20 Costs Application 1 – relating to 5 year Land Supply.

- EWH 21 Costs Application 2 – relating to late evidence put in by Mr Walker.  
 EWH 22 Costs Application 3 – relating to late evidence put in by Ms Waldron.  
 EWH 23 Response to BANES' Costs Application.

***For Interested Persons***

- IP 01 Copy of e-mail from Ms Tracey Brown re: Boxbury Hill  
 IP 02 Script of statement of Mr K Betton with appendices re: Cappards Road.  
 IP 03 Script of statement by Mr V Pritchard with plans re: Cappards Road.

**DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

- PI 01 Letter from Chairman of Stowey-Sutton Parish Council dated 7 July 2015 with representations about the appeal scheme and its relationship to the Stowey-Sutton Neighbourhood Plan  
 PI 02 Copy of the draft Stowey Sutton Neighbourhood Plan  
 PI 03 Report by the Independent Examiner on the Stowey Sutton Neighbourhood Plan  
 PI 04 Letter from Bath & North East Somerset Council relating to the Stowey Sutton Neighbourhood Plan  
 PI 05 Submissions from the appellants relating to the Stowey Sutton Neighbourhood Plan – including appendices.  
 PI 06 Exchanger of emails between The Planning Inspectorate, Bath & North East Somerset Council and the Appellant's agent relating to the effect of the Council's CIL Schedule on the submitted Section 106 planning obligation.

**PLANS**

***Application plans***

	<i>Drawing No.</i>	<i>Subject/ Description</i>
Plan A.1	725/102E	Illustrative Master Plan

***Illustrative drawings supporting the application***

Plan A.2	100-1 Rev D	Illustrative layout
Plan A.3	112	Illustrative Sections
Plan A.4	2817/01	Topography
Plan A.5	2817/02	Landscape Planning Designations and Character Areas
Plan A.6	2817/03A	Zone of Theoretical Visibility on Completion



Plan A.7	2817/04A	Landscape Strategy
Plan A.8	2817/ PHOTO/01	Photographic Viewpoint 1
Plan A.9	2817/ PHOTO/02	Photographic Viewpoint 2
Plan A.10	2817/ PHOTO/03	Photographic Viewpoint 3
Plan A.11	2817/ PHOTO/04	Photographic Viewpoint 4
Plan A.12	2817/ PHOTO/05	Photographic Viewpoint 5
Plan A.13	2817/ PHOTO/06	Photographic Viewpoint 6

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## APPENDIX

### SUGGESTED PLANNING CONDITIONS

- 1). The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the latest.
- 2). Approval of the details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval in writing before any development is commenced. The development shall be carried out in accordance with the approved details.
- 3). The roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly bound and compacted footpath and carriageway to at least base course level between the dwelling and existing highway.
- 4). Plans showing access, parking and turning areas, including details of surfacing, shall be submitted to the Local Planning Authority for approval in writing before the development is commenced. All areas shall be constructed and surfaced in accordance with the approved details before the dwellings are occupied. The parking areas shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 5). Prior to the commencement of the development a Construction Management Plan (CMP) shall be submitted to the Local Planning Authority for approval in writing. The CMP shall include details for making deliveries (including storage arrangements and timings), contractor parking, construction access, wheel wash arrangements and traffic management procedures. The development shall thereafter be carried out in accordance with the measures set out in the approved CMP.
- 6). Prior to the commencement of development a photographic condition survey (annotated to a survey plan) shall be carried out recording the condition of the approach roads to the site (within 400 metres of the site). The survey shall be submitted to the Local Planning Authority for approval in writing. All damage resulting from development shall be made good in accordance with details and a timetable submitted to and agreed in writing by the Local Planning Authority.
- 7). Prior to the commencement of development a detailed drainage strategy shall be submitted to the Local Planning Authority for approval in writing. The strategy shall include:
  - developer correspondence with sewage undertakers
  - drawings showing the proposed drainage system, including the location of the oversized surface water pipes and how these will connect with outfalls to the drainage ditch and the cellular storage tank

- drawings illustrating how discharge rates above 1:30 will be diverted to the cellular storage tank
- drawings illustrating how the storage tank will drain at greenfield rates and outfall to the drainage ditch.
- supporting Windes files showing the simulated performance of the proposed system
- drawings showing the design of the proposed hydrobrake, with calculations showing how this will limit discharge to greenfield rates

For any proposed adoption of surface water sewers, confirmation from Wessex Water will be required that they are satisfied that the additional discharge into their network is acceptable must be submitted to the Local Planning Authority. All discharge rates and connection points will need to be agreed with Wessex Water.

Development shall take place in accordance with the agreed drainage strategy.

- 8). No development shall commence until a written scheme of archaeological investigation has been submitted to the Local Planning Authority for approval in writing. The programme of archaeological investigation shall provide a field evaluation of the site to determine date, extent, and significance of any archaeological deposits or features, and shall be carried out by a competent person and completed in accordance with the approved written scheme.
- 9). No development shall commence until the results of the archaeological field evaluation have been presented to the Local Planning Authority a subsequent programme of archaeological work has been agreed in writing with the Local Planning Authority. The agreed programme of archaeological work shall be carried out by a competent person and completed in accordance with the approved scheme.
- 10). Prior to the occupation of the development an ecological and landscape management plan shall be submitted to the Local Planning Authority for approval in writing, setting out measures for the long term management of new and retained habitats including hedgerows and drainage ditches. The hedges and ditches shall thereafter be maintained in accordance with the approved details.
- 11). Prior to the commencement of development a Construction Ecological Management Plan shall be submitted to the Local Planning Authority for approval in writing. This shall set out physical and procedural measures for the protection of habitats and species during construction, in accordance with the recommendations of the ecological report. This document should include information on key habitat features requiring protection as well as the measures that will be employed on site on a daily basis to ensure accidental events such as pollution are avoided wherever possible. The development shall be carried out in accordance with the approved Construction Ecological Management Plan.
- 12). No works of site preparation shall commence and no trees, hedgerows or other planting shall be felled, lopped, removed or otherwise damaged until

details have been submitted to and approved in writing by the Local Planning Authority showing the trees, hedgerows and other planting which are to be retained.

- 13). No development shall take place until a Detailed Arboricultural Method Statement (DAMS) with Tree Protection Plan has been submitted to the Local Planning Authority for approval in writing. The DAMS shall include the present hedgerows and ditches on the site and incorporate a provisional programme of works, supervision and monitoring by an arboricultural consultant, and provision of site visit records and certificates of completion. The DAMS shall also include the control of potentially harmful operations such as the storage, handling and mixing of materials on site, burning, location of site office, level changes, service run locations including soakaway locations and movement of people and machinery. The development shall be carried out in accordance with the approved details. A signed certificate of compliance shall be provided by the appointed arboriculturalist to the Local Planning Authority on completion.

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.