Department for Communities and Local Government

Mr Jonathan Dunbavin
ID Planning Limited
Atlas House
31 King Street
Leeds
LS1 2HL

Our Ref: APP/N4720/A/13/2200640

10 March 2015

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY THORNHILL ESTATES:
BAGLEY LANE/CALVERLEY LANE, FARSLEY, LEEDS, WEST YORKSHIRE
APPLICATION REF: 12/04046/OT

Richborough Estates

1. I am directed by the Secretary of State to say that consideration has been given to the reports of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held a public local inquiry on 19 and 22 November and 28-29 November 2013 into your client's appeal against the failure of Leeds City Council (the Council) to give notice within the prescribed period of a decision on an application for outline permission for a residential development (about 400 dwellings and associated works) at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012. This inquiry was then reopened on 11 November 2014 for four consecutive days.

2. The appeal was recovered for the Secretary of State's determination on 4 July 2013 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector, whose reports are enclosed with this letter, initially recommended that the appeal be allowed and outline permission granted but, in the light of his findings at the reopened inquiry, he subsequently recommended that it be dismissed and outline permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's final recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless

Jean Nowak
Planning Casework Division
Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gsi.gov.uk

otherwise stated, refer to the Inspector's reports (IR(i) for the earlier report and IR(ii) for the more recent report).

Procedural matters

4. The Secretary of State notes (IR(i)11-12) that an Environmental Statement was submitted voluntarily by the appellants and that the Inspector was satisfied at the time that it met the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State has also taken account of the update on environmental information referred to at IR(ii)7-9. Overall, the Secretary of State considers that sufficient information has been provided for him to assess the environmental impact of this appeal.

5. Following the initial close of the inquiry on 29 November 2013, the Secretary of State wrote to the parties on 14 March 2014 seeking comments on the publication of the Planning Practice Guidance and again on 14 April 2014 affording an opportunity to comment on habitats issues which had been brought to his attention after the inquiry had closed. In the light of these comments, the Secretary of State then decided that the most appropriate way forward would be to reopen the inquiry, as described at IR(ii)2-6. A list of the representations received is set out in an Annex to this letter, and copies can be made available on written request to the address at the foot of the first page of this letter.

Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time when the inquiry first opened, the development plan for Leeds comprised the Leeds Unitary Development Plan Review 2006 (LUDPR) and the Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal were those identified at IR(i)17-18. Since then, Leeds have adopted their Core Strategy (CS) on 12 November 2014 (IR(ii)10). However, the Inspector points out (IR(ii)215) that the proposal remains contrary to LUDPR Policy 34 as that remains a saved policy following the adoption of the CS. Although the Council have subsequently resolved to withdraw this policy (as indicated in their letter of 11 February 2015 listed in the Annex to this letter), and the appellants have suggested in their letter of 5 February 2015 that that is an important material consideration in this case, the Secretary of State gives it little weight at this early stage in the Council's work towards preparing their Site Allocations Plan (SAP).

7. Other material considerations that the Secretary of State has taken into account include: *the National Planning Policy Framework* (the Framework) (March 2012) and the associated Guidance (March 2014); and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

8. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Richborough Estates

Main Issues

9. Having regard to the issues identified by the Inspector at IR(i)132 and IR(ii)182, the Secretary of State considers that the main considerations in this case are:

    a. whether there is a five year supply of housing land;
    b. the release of the appeal site in the context of the spatial strategy for Leeds;
    c. whether the development would be likely to result in harm to bats as a protected species; and
    d. the sustainability of the appeal scheme and its impact on local character and identity.

Whether there is now a five year supply of housing land

10. As the appeal Inspector confirms (IR(ii)183), the CS has now been found to be sound, with a base requirement for the period from 1 April 2014 to 31 March 2019 of 20,380 dwellings – lower than his assessment at the time of the original session of the inquiry. However, as it forms the basis for an up-to-date development plan, the Secretary of State accepts it as an indisputable basis for the determination of appeals.

11. Like the Inspector, the Secretary of State has then gone on to consider the implications of the shortfall in provision against the base requirement. He agrees with the Inspector's reasoning at IR(ii)184-188, and with his conclusion at IR(ii)189, that the five year housing requirement comprises about 24,440 dwellings including the undersupply since April 2012 to be made up in this period and the application of a 5% buffer.

12. The Secretary of State has also carefully considered the Inspector's discussion on "Supply" at IR(ii)190-201 and agrees with his conclusion at IR(ii)202 that an overall supply figure of about 26,500 homes would be reasonable. The Secretary of State therefore also agrees with the Inspector's conclusion at IR(ii)203 that a supply of some 26,500 homes exceeds the requirement by just over 2,000 units, thereby indicating that a five year housing land supply can be demonstrated with scope for some flexibility. He also agrees (IR(ii)204) that the difference from the appeal Inspector's original conclusion is accounted for by the different approach accepted in the adopted CS along with evidence on completions, city centre/inner area viability, regeneration, empties and other sources of supply.

The release of the appeal site in the context of the spatial strategy for Leeds

13. The Secretary of State agrees with the Inspector with regard to the Council's spatial strategy at the time when the inquiry first opened in November 2013 (IR(i)133-135) and, like the Inspector (IR(ii)216), he recognises that the fact that a five year supply of housing has now been established in an up-to-date development plan represent a significant change in circumstances. He agrees with the Inspector that this means that paragraph 49 of the Framework does not take effect, and also agrees (IR(ii)219) that the test within paragraph 14 of the Framework does not come into play.

Richborough Estates

14. As indicated in paragraph 6 above, the Secretary of State gives little weight to the fact that the Council have indicated that they now intend to withdraw LUDPR Policy 34. The Secretary of State takes the view that, although that protects land not envisaged to be needed for development during the period covered by the housing policies of the LUDPR (IR(i)133), an intention to withdraw it does not necessarily imply that all such sites should be released immediately as there will be a number of other factors to be taken into account by the Council in preparing their SAP.

Whether the development would be likely to result in harm to bats

15. The representations received following the original close of the inquiry (as referred to at paragraph 5 above) included material from the Farsley Residents Action Group (FRAG) indicating that bats were potentially more prevalent on the appeal site than first thought, and including evidence that the site is used for roosting and by some rarer bat species (IR(ii)205). The Secretary of State therefore asked the Inspector to consider this matter as part of the reopened inquiry and, having carefully considered the Inspector's findings on this matter (IR(ii)206-208), he agrees with his conclusion at IR(ii)209 that, subject to the imposition of suitable conditions, the proposed development would be unlikely to result in harm to bats as a protected species.

Sustainability, local character and identity

16. Having carefully considered the Inspector's arguments at IR(i)144-149, the Secretary of State agrees with his conclusion at IR(i)150 that, despite some deficiencies in public transport provision and walking distances to services, the proposal would constitute a sustainable development. He also agrees that neither concerns raised relating to educational provision (IR(i)151) nor those relating to lack of health care provision (IR(i)152) would provide reasons to resist the development. Furthermore, for the reasons given at IR(i)153-160, the Secretary of State also agrees with the Inspector's conclusion at IR(i)161 that highways and drainage infrastructure would be acceptable subject to the measures proposed as part of the development.

17. However, taking account of the Inspector's comments at IR(i)163-166, the Secretary of State agrees with his conclusion at IR(i)167 that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value. In coming to this conclusion, the Secretary of State has had particular regard to the desirability of preserving or enhancing the character or appearance of the Farsley Conservation Area, and gives appropriate weight to the significant change in character which the Inspector identifies.

<u>Conditions and obligations</u>

18. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions at IR(i)194-197 and IR(ii)214. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

Richborough Estates

19. The Secretary of State has also considered the Inspector's comments at IR(i)187-192 and IR(ii)212-213 on the proposed Obligations and is satisfied that these would meet the tests in CIL regulation 122. However, the Secretary of State does not consider that the terms of the Undertaking would overcome his reasons for dismissing the appeal. He also agrees with the Inspector at IR(i)193 that the suggestion that there should be a commitment to build the dwellings within the current five year supply period would be overly prescriptive and unreasonable.

Overall Conclusions

20. The Secretary of State is satisfied that the Council have now identified a five year supply of housing land in an up-to-date CS without the appeal site, so that the presumption in the Framework in favour of sustainable development does not apply. Furthermore, he considers that the adverse impacts on local character and identity count against the proposed scheme and considers it appropriate for the Council to proceed to identify the most sustainable sites through the preparation and adoption of their SAP.

Formal Decision

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's later recommendation at IR(ii)221. He hereby dismisses your client's appeal and refuses planning permission for the erection of 400 dwellings and associated works at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012.

Right to Challenge the Decision

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

23. A copy of this letter has been sent to Leeds City Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Richborough Estates

Yours faithfully

Jean Nowak

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

Annex

Representations received by Secretary of State

Correspondent	**Date**
Cllr Andrew Carter	11/2/14: 14/3/14; 31/3/14; 9/4/14; 28/4/14
Stuart Andrew MP	14/2/14; 2/4/14; 23/6/14
ID Planning (appellants' agent)	14/2/14; 26/3/14; 7/4/14; 23/5/14;2/6/14; 3/6/14; 13/6/14; 4/2/15; 5/2/15; 3/3/15
FRAG	31/3/14; 10/4/14; 14/5/14; 27/5/14
Leeds City Council	31/3/14; 28/4/14; 23/5/14; 30/5/14; 20/6/14; 11/2/15

Richborough Estates

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 27 January 2014

Richborough Estates

Town and Country Planning Act 1990

Leeds City Council

Appeal by

Thornhill Estates

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

Inquiry opened on 19 November 2013

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

File Ref: APP/N4720/A/13/2200640

File Ref: APP/N4720/A/13/2200640
Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Thornhill Estates against Leeds City Council.
- The application Ref 12/04046/OT is dated 21 September 2012.
- The development is proposed residential development.

Summary of Recommendation: That the appeal is allowed and outline planning permission be granted.

Procedural Matters

1. The inquiry sat for six days: 19-22 November 2013 and 28-29 November 2013 and was closed on 29 November 2013. I made an accompanied visit to the site and the surrounding area on the morning of 29 November 2013.

2. The application was submitted in outline form with all matters of detail reserved for subsequent approval apart from the means of access from Calverley Lane.

3. The appeal was recovered for a decision by the Secretary of State for Communities and Local Government by letter dated 4 July 2013, as it involves a proposal for residential development of over 150 units or on a site of over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

4. The appeal is against the non-determination of the application by Leeds City Council (the Council) within the statutory period. The Council subsequently resolved that, had it been in a position to refuse the application, it would have done so for the following reasons:

    1. *The Local Planning Authority considers that the release of the Kirklees Knowl PAS site for housing development would be premature being contrary to Policy N34 of the adopted Leeds Unitary Development Plan Review (2006) and contrary to Paragraph 85 bullet point 4 of the National Planning Policy Framework because its suitability needs to be comprehensively reviewed as part of the preparation of the Site Allocations Plan. The size of the site, the possible need for a school and the availability of other housing development opportunities in the locality means that the site does not fulfil the exceptional criteria set out in the interim housing delivery policy approved by Leeds City Council's Executive Board 13/3/13 to justify early release ahead of the comprehensive assessment of safeguarded land being undertaken in the Site Allocations Plan.*

    2. *There are outstanding highway objections in relation to the lack of a direct safe pedestrian and cycle route along the Ring Road to access schools and New Pudsey Train Station. As such the development is detrimental to highway safety which is contrary to policies N12, T1, T2, T7 and GP5 of the adopted Leeds Unitary Development Plan Review (2006) and the guidance contained within the adopted Street Design Guide SPD.*

    3. *The development would require a signed Section 106 agreement to cover affordable housing, education, greenspace, public transport, travel planning*

Richborough Estates

and off site highway works. The Council anticipates that a Section 106 agreement covering these matter should be provided prior to the Inquiry however, it reserves the right to contest these matters at the appeal should the Section 106 Agreement not be completed or cover all the requirements.

5. Statements of Common Ground have been agreed between the appellants and the Council.[1] These record that the part of the first reason for refusal that relates to the need for some of the site for a school, the second reason for refusal dealing with outstanding highway objections, and the third reason requiring obligations to be in place have been addressed, so far as the Council are concerned, subject to the wording of the obligations being agreed.

6. Planning obligations in the form of an agreement between the appellants and the Council and a unilateral undertaking made by the appellants, both under S106, were submitted at the inquiry[2]. The former makes provision for affordable housing, education and public transport contributions, greenspace and off-site highway works. The latter relates to the reservation of land for a primary school within the appeal site.

7. This report contains a description of the site and surroundings, reference to environmental information, an explanation of the proposal, identification of the relevant planning policies, the cases of the parties and my conclusions and recommendation. Lists of appearances, inquiry documents, abbreviations and recommended conditions are appended.

The Site and Surroundings

8. The appeal site is located approximately 8.5km to the north-west of Leeds City Centre. The site comprises 17.8ha of mainly improved grassland used for grazing, on a north-east facing slope of the Aire Valley. It is crossed by hedged field boundaries and interspersed with mature trees. A line of high-voltage electricity pylons bisect the site on a south-west to north-east axis.

9. The site is within the Leeds Outer Ring Road (A6120), which lies to the north-west, and abuts the northern extent of the built up area of Farsley. The village of Rodley lies adjacent to the north and north-east boundaries of the site. The small linear settlement of Bagley runs along the eastern boundary, connecting Farsley with Rodley.

10. The site fronts onto Calverley Lane to the south-west, which connects Farsley with the ring road. The rear boundaries of properties forming part of a 1970s housing development, known as the Kirklees Estate, abut the southern boundary, separated by a narrow fenced public right of way (Public Footpath No 18 Pudsey). A recently completed housing development, Poplar Farm, is adjacent to the south-east corner of the site. To the east is a gravel track which leads onto Oaklands Road, with commercial buildings and housing beyond. To the northern and north-eastern boundaries is a mix of residential development along Towler Drive and Petrie Street/Crescent, Rodley. Between the north-west boundary of the site and the ring road is an area of predominantly open low-lying land containing a small number of buildings used

[1] Documents SOCG1 and SOCG2
[2] Documents TE11 and TE12

Richborough Estates

by landscape contractors. The western extremity of the appeal site is adjacent to the ring road, close to its junction with Calverley Lane.

Environmental Information

11. The proposed development falls under Schedule 2(10) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as an urban development project exceeding 0.5ha. The site exceeds the thresholds and criteria in Schedule 2 of the Regulations. An Environmental Statement[3] was submitted voluntarily by the appellants following the obtaining of a scoping opinion from the Council.

12. The Environmental Statement complies with the above Regulations. The information provided is sufficient to enable the environmental impact of the proposed development to be assessed. The contents of the statement, comments received on it and all other environmental information submitted in connection with the appeal, including that given orally at the inquiry, have been taken into account in arriving at the recommendation.

The Proposal

13. The outline application for residential development indicates that around 400 dwellings would be built on the site. The details of the access from Calverley Lane[4] show a roundabout offset from the existing line of the highway and a new footway along the eastern side of road, linking with existing pavements on Calverley Lane to the north-west and south-east. It is indicated that the speed limit along Calverley Lane would be reduced to 30mph to correspond with the limit as it leaves the built-up area of Farsley.

14. The Masterplan Layout[5] shows a second vehicular access to the site via the Poplar Farm development. Non-vehicular links to Petrie Street, Oaklands Road, Poplar Farm, Kirklees Close and Calverley Lane are also indicated. The layout shows roads and areas of open space, incorporating existing landscaping features and footway links, separating clusters of housing. The pylons would cross a central tract of open space.

15. The proposals incorporate off-site highway works comprising a new footway/cycleway along the ring road from the site access to the footbridge near Priesthorpe School, a length of some 1.5km; improvements to the roundabout at the junction of the ring road with Rodley Lane; some modifications to the T-junction of Calverley Lane with the ring road; and the installation of a traffic calming measure on Badley Lane. These works would be secured either by conditions or through the S106 agreement.

Planning Policies and Guidance

16. The RSS was partially revoked on 22 February 2013. Although some policies in the RSS which relate to the Green Belt around York were retained, these do not affect Leeds and the appeal site where no policies remain in force. The

Richborough Estates

[3] DOC1, DOC2 and DOC3
[4] Plan2
[5] Plan3

development plan relevant to the appeal, therefore, comprises the LUDPR[6]. The policies of the LUDPR relevant to this appeal were saved by directions of the SoS in 2007 and 2009.

17. The LUDPR shows the appeal site as lying adjacent to the MUA which incorporates the built up areas of Farsley, Rodley and Bagley[7]. The site is identified as PAS land under Policy N34 of the LUDPR[8]. In the explanation to the policy the site is referred to as Kirklees Knowl, Farsley (N34-26). Policy N34 was intended to ensure the endurance of Green Belt boundaries by designating land for longer-term development needs. The suitability of PAS land for development would be reviewed as part of the preparation of the LDF. In the meantime the policy allows only development that is necessary for the operation of existing uses or alternatively temporary uses which would not prejudice long-term development. To the west of the site on the opposite side of Calverley Lane is a smaller area of land which is also a PAS site.

18. The LUDPR also contains housing supply policies, including Policy H1, which indicates that provision will be made for the annual average requirement identified in the RSS. Policy H3 deals with the delivery of housing land in phases and is accompanied by allocations relating to those phases. Policy H4 deals with non-allocated sites. Other relevant LUDPR policies relate to affordable housing (Policies H11-H13), green space (Policies N2 and N4), planning considerations (Policy GP5), urban design (Policy N12) and transport and highway matters (Policies T2, T5 and T7). The LUDPR plan period is 1998 to 2016.

19. The LUDPR is to be replaced by the emerging Leeds LDF. The Publication Draft of the Leeds CS[9] is at examination stage. Hearings took place in October 2013. The Inspector has written to the Council requesting further work on the assessment of gypsies and travellers needs and on the policy approach to affordable housing. These matters are likely to delay the adoption of the CS beyond the mid-2014 date anticipated in SOCG1.

20. The Council has also published a SAP Issues and Options DPD[10] which was subject to consultation in the summer of 2013. The Council is currently considering several thousand representations. The timetable for a Publication Draft is dependent on the adoption of the CS but is estimated to be towards the end of 2014 at the earliest[11].

21. Draft Policy SP6 of the CS indicates that 70000 (nett) new dwellings will be accommodated between 2012 and 2028. The policy also contains a “step-up” whereby 3660 dwellings per annum would be accommodated between 2012/13 and 2016/17 with 4700 dwellings per annum between 2017/18 to the end of the plan period. 500 dwellings per annum are anticipated from windfalls, leaving 62000 (nett) dwellings to be identified. The Issues and Options SAP indicates

Richborough Estates

[6] There is also adopted DPD on Natural Resources and Waste which has not been cited as relevant
[7] LCC4
[8] CD4
[9] CD3
[10] CD7
[11] LPA3

that there is an existing supply of some 32000 dwellings so that sites for around 34000 units need to be found. The same document assesses sites for potential allocation categorising them as Green, Amber or Red[12]. The appeal site is coded Amber.

22. In order to stimulate the housing market and increase the supply of housing land, the Council's Executive Board introduced an interim policy in March 2013[13] for PAS land. The policy incorporates criteria against which the release of PAS sites for housing would be considered. The criteria in summary cover (i) relationship to the MUA or Major Settlements as defined by the Draft CS; (ii) a size threshold of 10ha; and (iii) the need for the land for alternative uses. If the size threshold is not met but the other two criteria are satisfied, then development of a larger site for housing may be supported if (iv) there is a lack of housing development opportunities in the area and (v) the proposal includes or facilitates significant planning benefits.

23. There are also other local policy documents of relevance to the appeal, namely SPG3 – Affordable Housing; SPG4 – Greenspace Relating to New Housing Development; SPG11 – Section 106 Contributions for School Provision; Public Transport Improvements and Developer Contributions SPD; Leeds Street Design Guide SPD; and the Travel Plans SPD[14].

24. The National Planning Policy Framework (the Framework) was published in March 2012 and sets out the Government's policies to achieve sustainable development. Other national documents of relevance are The Planning System: General Principles (General Principles)[15], MfS[16] and the DMRB[17]. Reference will also be made to the NPPG[18], which at the time of the inquiry was still in draft form.

The Case for Thornhill Estates

The material points are[19]:

Prematurity

General Principles

25. General Principles sets out national guidance on the topic of prematurity but was not mentioned in the Council's evidence. Although the prematurity case is relative to the production of the SAP, that document is at a very early stage of preparation with no consultation on a fixed set of allocations. Adoption is not likely to be until early 2016 at the soonest given the need to tie in with the

Richborough Estates

[12] *Green* – sites which have the greatest potential for housing; *Amber* – sites which have potential but there may be issues which need to be resolved, or the site may not be in such a favoured location as those highlighted in green; *Red* – sites which are not considered suitable for allocation for housing.
[13] CD18
[14] CD35, CD33, CD38, CD26, CD29 and CD37 respectively
[15] CD3
[16] CD25
[17] FRAG4
[18] CD17
[19] Summarised from the appellant's closing submissions TE13

outcome of the CS examination. It is not a document that weight can be attached to pursuant to Paragraph 216 of the Framework. Similarly in relation to Paragraph 18 of General Principles, the SAP is not yet at a stage where refusal on prematurity grounds would be justified. Moreover, in addition to the timing of Plan, the development must be so substantial as to have the effects described in Paragraph 17. The Council has not proved its case on either timing or scale and indeed appeared to be unaware of these key tests.

26. In terms of scale, 400 units is less than 0.6% of the CS requirement and just over 1% of the total of new allocations that need to be identified. For the Outer West Area, the appeal site is around 15% of the new allocations required. This is in the context of the site being adjacent to the MUA, no identification of strategic sites in the CS and the interim policy on PAS sites accepting sites of upto 10ha or 225 dwellings. Indeed a number of PAS sites under 10ha could come forward in the same area or sites in excess of 10ha can be considered as acceptable under the interim policy. In these respects the site could not be beyond the threshold of "so substantial".

27. No part of the Council's case on prematurity relates to the cumulative effect of granting planning permissions. The totality of PAS sites amounts to only 25% of the new allocations required according to the CS. The criteria within the interim policy for the release of PAS sites do not include reference to cumulative impacts and no evidence of harm from cumulative effects has been put forward by the Council.

LUDPR Policy N34

28. The purpose of Policy N34 of the LUDPR was to protect land to allow it to be developed in the future, not because it was unsuitable for development. The land was identified 12 years ago. Although there is reference in the supporting text that sites would be reviewed in the LDF, the policy itself does not say that. Indeed the Council has taken into account current circumstances in agreeing to release PAS sites in advance of the review and regardless of the five year housing land supply position. This is an acceptance that Policy N34 is out of date. This is logical as the SAP will not be in place for two years and there will be a need to maintain a rolling five year housing land supply.

29. Whilst Paragraph 85 of the Framework is referred to in the first reason for refusal, it is not otherwise advanced as part of the Council's case. It is a policy dealing with the protection of the Green Belt through the preparation of plans and defining of boundaries and how safeguarded land policies should be framed at their inception. It is entirely different to the applicability of a policy that is 12 years old. No case has been made on national policy grounds to refuse planning permission for reasons of prematurity.

Executive Board Report

30. In terms of the Executive Board Report, it is not a policy of any sort, interim or otherwise. It was not consulted upon, is subject to a legal challenge and is not intended to go into a plan or SPD. The furthest that the Council goes is that it will have regard to the criteria within the policy. In any event it should be applied flexibly.

Richborough Estates

31. In applying the criteria, the site is adjacent to a MUA and the issue of the alternative use of part of the site as a school has been resolved. The 10ha threshold does not draw upon any other guidance. Moreover, the figure is not an absolute. In terms of the further criteria, the application of development opportunities in the area being demonstrably lacking is incapable of proper application, has not been proven by the Council and is of no weight. It is not defined in the Executive Board Report. There is no support in national policy for such an approach. The Council has not followed the HMCA of the CS. Most sites identified by the Council fall into a different HMCA. The assessment of housing requirements has to be on a LPA wide basis.

32. The criterion relating to significant benefits and the examples given must be CIL compliant. There are several benefits to be taken into account in the planning balance. There are choices for the Council in provision of affordable housing, including commuted sums to be spent off-site where significant additional benefits can be achieved. This approach is endorsed by the Council[20] and is being pursued elsewhere[21]. There is the offer to reserve 2ha of land within the site for a primary school. No other site is available. There are a series of highway improvements within the locality of the site acknowledged to be significant infrastructure enhancements[22].

UDP Inspector Reports

33. The Council quotes the UDP Inspector reports but they are not relied upon to frame any specific opposition to the appeal. In any event there are two material points. Firstly the 2006 comments were made in the context of national policy at that time and the sequential approach to the development of housing land. At the time the Inspector concluded that there was housing land to meet needs without significant areas of greenfield land being utilised. Secondly, the Council has not resisted the proposal for reasons relating to openness, character or separation of settlements.

Plan Led System

34. Finally on the topic of prematurity, the Council's reference to Paragraph 17 of the Framework and the plan led system has to be considered in the context of national policy as a whole. There is also an obligation to keep plans up-to-date and to deliver, amongst other things, housing. The Tewkesbury High Court[23] and Harlow appeal[24] decisions confirm the approach. In addition the point about the need for up-to-date plans and the weight that can be given to emerging plans has been confirmed by the Planning Minister[25].

35. On the grounds of prematurity alone the Council is unable to prove its case.

Richborough Estates

[20] CD19
[21] CD22
[22] SOCG2
[23] ID12
[24] ID40
[25] CD14, TE5 and FRAG3

Five Year Housing Land Supply

36. The appeal cannot be refused simply because there is a five year housing land supply. Policy N34 is out of date regardless of the land supply issue as demonstrated by the Council's approach to the release of PAS land in advance of the SAP. Nevertheless the absence of a five year supply adds further weight to the case as N34 is a policy relevant to the supply of housing and would be out-of-date in accord with Paragraph 49 of the Framework. Paragraph 14 of the Framework requires the grant of planning permission in such circumstances, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole or specific policies in the Framework indicate that development should be restricted. The latter does not apply.

Requirement

37. Policy H1 of the LUDPR refers to the requirement figure in the RSS which is 4300 dwellings per annum (21500 units for five years). This reference does not rely upon the RSS being part of the development plan as explained in the Horsforth appeal decision[26]. That appeal differs from the Hunston case[27] where the relevant Regional Strategy figure did not reflect the objectively assessed need for housing. Although the RSS has been revoked, the SEA and Post Adoption Statement[28] for the revocation point out that the partial review of the RSS identified higher rates to boost the supply of housing. Revocation should not be an opportunity to avoid boosting housing supply.

38. The Council's approach is to rely on the emerging CS which shows a five year requirement of 20307 units. However, the housing figures and the "step up" approach in the CS were subject to objections and the CS is yet to be found sound. In any event in the year 2012/13 provision was some 2000 units below the target. In addition, whilst the Council takes the view that undersupply prior to the 2011 census should be discounted due to the lower population numbers and household formation rates than predicted, it is necessary to look at the position in 2011/12 before the start date of the CS. Then the provision was some 1900 units which represented an under-delivery of between about 1300 and 2700 units depending on the basis of the requirement. Taken together the 2011/12 and 2012/13 undersupply would have been above 3300 dwellings against the lowest requirement. Furthermore, in the current year (2013/14) delivery is below that anticipated by the CS. Overall undersupply by April 2014 will be some 4500 units. Then the "step up" will kick in which will lead to a five year requirement of some 25800 dwellings.

39. The Council seeks to avoid this requirement by applying the Liverpool approach to dealing with the backlog rather than the Sedgefield approach[29]. To do so would be at odds with the Framework's requirement to significantly boost supply. It would also be contrary to the advice within the draft NPPG[30] and various

Richborough Estates

[26] APP5 paragraph 55
[27] Hunston Properties Ltd v SoS for DCLG and St Albans City DC
[28] TE4
[29] Liverpool spreads any backlog over the whole plan period, Sedgefield over the next 5 years
[30] CD17

appeal decisions[31]. The fact that Leeds is a Regional City does not make it a special case. Indeed the CS claims to be an engine for growth and a means of fulfilling the aspirations set out in the Vision for Leeds and its Growth Strategy. In addition moving the five year supply on by a year to April 2014 will not be sufficient to address the undersupply. Even applying the Liverpool approach to the backlog there would be a need to add around 1400 units to the five year requirement.

40. The requirement position is materially worse if the strength of the "step up" provision within the CS is analysed. The Inspector in the Horsforth appeal decision disagreed with the Council's approach on the basis of similar evidence to that before the current inquiry. The SHMA[32] sets out the "step up" approach. The employment led scenario is subject to a sensitivity test based on the assumption that headship rates would remain constant for the period 2010 to 2015. However, that period is coming to an end. Moreover, the fixed headship rate is based on recessionary considerations, including constraints on supply. Furthermore, the ONS 2011 Household projections indicate a figure of over 4000 per annum which is above the figure for the early years of the CS. Since the Horsforth appeal, Edge Analytics have updated the demographic evidence[33]. The REM figures suggest housing requirements above the early years CS figures, more in line with the CS average of 4375 units per annum.

41. In that there has already been an undersupply in 2011 and 2012 and will be in 2013, the addition of a 5% or 20% buffer as required by Paragraph 47 of the Framework does not alter the position on the lack of a five year supply. Based on the number of years (since 2008) and the quantum of undersupply, the case can be made for persistent undersupply such that a 20% buffer would be appropriate. The Council's plea that, even if more permissions are granted, the requirement would not be met, is not accepted. There has been a steady decline in the number of permissions granted since 2009/10. Experience indicates that sites that go to appeal tend to be developed.

42. In conclusion, on the requirement side, the Council is unable to demonstrate a figure below its claimed supply on any basis.

Supply

43. The Council's position is that it has a five year supply of 21407 units which is some 1100 above its claimed requirement. However, the 2011-12 AMR[34] shows an "uncharacteristically high" supply figure for 2016/17 and suggests a figure which would be 1000 or so units less. It is also considered that some 1000 fewer units came forward from windfalls in the last two years than anticipated by the CS. Demolitions have also been running at lower levels than anticipated due to sites not coming forward, particularly in the inner urban area. This equates to a further reduction in supply of some 500 dwellings. Analysis of sites included within the five year supply undertaken at the inquiry indicates that a further 2175 dwellings will not come forward.

Richborough Estates

[31] ID15, ID16, ID17, ID18, ID19, Appendix A of R6.3 and APP6
[32] CD8
[33] CD11
[34] CD12

44. Of those SHLAA sites without planning permission, the application of the Red and Amber traffic light system used in the Issues and Options SAP shows that some 2300 dwellings fall within these categories. On that basis it is a very strong indication that they cannot be said to be available, suitable, achievable and viable in the terms set out within Footnote 11 of Paragraph 47 of the Framework. That said some sites identified as Green in the SAP and which are not currently within the five year supply could come forward but these only total some 850 units.

45. The Council's five year supply has a base date of September 2012. However, regard must be had to the current position. No other sites have been suggested that might fall within the supply. There have been a reducing number of permissions and completions since September 2012. There is no evidence to show a larger supply just around the corner. The supply of some 1700 units from PAS sites has not been clearly identified. Even taking into account those sites shown in the first table in LCC1, there are over 600 units not accounted for. There is a contradiction in the Council's case if it relies on sites which are no different to the appeal site. Sites have to be identified so that they can be tested against Footnote 11.

46. Reliance on the SHLAA is also undermined by the review of sites undertaken by house builders[35]. Although house builders are represented on the SHLAA Partnership, there is little difference between the stance of the representatives and that of the Consortium in terms of housing numbers[36]. The house builders on the Partnership were not asked to review the majority of sites included within the SHLAA.

47. Even assuming in favour of the Council in relation to windfalls, demolitions, PAS sites and the 850 units from Green sites, there would still only be a supply of some 16200 units.

Conclusions on Housing Land Supply

48. When requirement and supply are considered together it is beyond question that the Council is unable to demonstrate a five year housing land supply. The gap between the two is "at least 10000 units." Therefore, the Council's approach to granting planning permission on PAS sites in principle must be extended to the appeal site when the Council points to no impediments or harm caused by its development now.

Richborough Estates

Highways and Sustainability

49. SOCG2 confirms with the Highway Authority that there is no basis for refusal on highways grounds. However, FRAG and local residents are concerned nonetheless. The appellants' evidence follows tried and tested approaches to modelling the effects on traffic routes and junctions. The use of photographs by FRAG and others does not invalidate the appellants' evidence. The starting point is set out in Paragraph 32 of the Framework. The impacts have to be seen in the context of the MUA location which is always going to be busy.

50. The approach to trip generation, using a survey of an adjacent housing area, is in line with Government advice. This has been sensitivity tested by taking an 85th

[35] CD13
[36] ID28

percentile of the TRICS database. Traffic surveys have been taken of the surrounding area. The effects of the development on particular junctions have been analysed. The surveys and analysis have been agreed with the Highway Authority.

51. Dawson's Corner Roundabout is busy but the effects of the development are modest. The assessment has taken into account the improvements to New Pudsey Station. The impact on the roundabout would not be severe. The analysis indicates that it is unlikely that people will cut through Farsley to avoid the roundabout. Vehicle and pedestrian movements arising from the development would not justify improvements to the Old Road/Bradford Road junction or the nearby zebra crossing and these have not been asked for by LCC.

52. The analysis of Rodley Roundabout requires modelling of the interaction of flows. The improvements will facilitate traffic movements through it. In particular the formalising of two lanes on the Rodley Lane North and Rodley Lane South approaches will provide benefits over the existing situation. There will also be a knock-on benefit for Bagley Lane and Canal Road. There will be no blocking of the exit from the roundabout or capacity issues on the single carriageway towards Horsforth. There will be some pedestrian safety improvements and no net detriment to pedestrians and cyclists. Full account has been taken of changes in traffic flows.

53. The Council's objective of introducing traffic signals at the Rodley Roundabout would not be affected by the appellants' proposed improvements to the junction. The option remains to commute the costs of the improvements as a contribution to the wider signalisation scheme. It is notable that the Council has specifically identified the appeal scheme in its funding bid[37].

54. Calverley Lane is lightly trafficked now and will remain well within capacity with the development. Pedestrian improvements will be to the benefit of all. Although the narrowest part of the lane will be reduced to about 5.9m in width[38] this will follow the Highway Authority's approach to speed reduction. Parking can remain in the narrowed section and elsewhere with the necessary forward visibility. MfS indicates that roads of between 5.5m and 6m are expected to accommodate parking.

55. Farsley Town Street is an active and well-used street. Its width is between about 7.3 and 7.6m which allows parking and the retention of available carriageway of some 5.5 to 5.7m. It operates satisfactorily now and it would continue to do so if the appeal is allowed.

56. The appellants' approach to traffic distribution is not undermined by the limited questionnaire of the Poplar Farm development undertaken by FRAG. The two sites are not comparable because the appeal site has almost direct access to the ring road. The results of the questionnaire must be in doubt because it indicates a traffic generation dramatically beyond any figures that could be justified by a TRICS analysis. Its results are at odds with the far more extensive Census information.

Richborough Estates

[37] FRAG2
[38] Appendix F to APP4

57. SOCG2 confirms that the site is sufficiently sustainable. The facts about the location of bus stops and the railway station, the nature of public transport services and the site's position in relation to jobs, shops and facilities are agreed. Sustainability is a matter of judgement. However, the public transport which is capable of being utilised is, in comparison to most sites, significant. Moreover, sustainability cannot be a basis for refusing development of a site on the edge of the MUA which has been identified for longer-term development since 2001 and where permission has been granted on appeal for an adjacent site with agreement that it was a sustainable location[39].

Drainage, Soils and Agriculture

58. In expressing concerns about infiltration FRAG misunderstood what SUDS is about. In this respect the infiltration capacity of the soils on the site are not relevant. The proposals are to attenuate surface water so that it would be released at a greenfield run-off rate. Storage would be designed to deal with a 1:100 year storm event plus climate change. This has been agreed with the Environment Agency, Yorkshire Water and LCC. As a result the development would not add to surface water flows and indeed would reduce them during large storms. Details of drainage would be agreed at a later stage. Yorkshire Water has confirmed that the existing combined sewer and sewage treatment works have the capacity to accommodate the foul drainage from the development.

59. A modest amount of the site is Grade 3a agricultural land and is isolated from other 3a land by roads, boundaries and 3b land. The farmer who uses the land for grazing has no objection to the loss of land to his business.

History, Coalescence and Character

60. SOCG1 indicates that the Council takes no issue on landscape and visual impact. It is clear that the formerly separate settlements of Farsley, Rodley and Bagley are now subsumed into the MUA of Leeds and physically connected by existing development. The view down Farsley Town Street towards the northern valley side of the Aire is over the top of the houses on the Kirklees Estate towards the A65 and not of the appeal site. This is the only view in the direction of the appeal site identified in the Conservation Area Appraisal and Management Plan[40] (CA appraisal). Indeed there are no views of the appeal site from within the Farsley Conservation Area other than from the recreation ground and its vicinity. From the recreation ground the site is set down and behind trees which would be reinforced by planting as part of the proposals. These views are not identified in the CA appraisal as important. FRAG appears to be implying that no development or change in land should take place beyond the CA boundaries. This is not the correct approach as development is often accommodated near conservation areas and within them. In the appellants' considered judgement there is no harm.

61. The appeals referred to by FRAG[41] are distinguishable from the current case for a number of reasons. Yate dealt with a proposal to add 210 dwellings to a settlement of 100 houses of rural character. It was not a PAS site. Yate was an

Pickborough Estates

[39] CD30
[40] Document contained within R6.2
[41] R6.3 appendices A to D

entirely separate town so the impacts of coalescence were different. Barwell and Groby both involved land designated as green wedge where there were five year supplies. In Armthorpe the CS had just been adopted, the proposal ran contrary to scale and phasing requirements for the settlement, it was not PAS land and there was a five year supply.

Overall Conclusions

62. Development of the site is not premature when viewed in the context of the General Principles document and the Council's approach to releasing PAS land. Policy N34 is out of date. The Council does not have a five year land supply. No harm has been identified from the development of this sustainable site. The Inspector is asked to recommend to the SoS that planning permission is granted.

The Case for the Council

The material points are[42]*:*

The development plan

63. The starting point under s38(6) of the Town and Country Planning Act 1990 is the development plan. The development plan in Leeds now consists only of the LUDPR. There are two policies at issue, N34 and H1. The proposed development is not in accordance with N34. That policy protects PAS land from development until a comprehensive review has been carried out through the LDF process which has not yet happened. The argument that, because the Council has accepted that some PAS land should be released before a review, in order to meet the need to provide more housing land, N34 was out of date and no weight should be put on it, is unsustainable.

64. Firstly, policies do not become out of date because there are reasons to depart from them. The need for housing land, as acknowledged by the Council in the interim policy, may be a material consideration to depart from the policy. Secondly, the analysis ignores the planning considerations which are not of interest to the appellants, i.e. anything other than the need to provide more housing land. Thirdly, N34 is entirely in step with Paragraph 85 of the Framework which provides policy support for the same approach in new policies. To accord with Paragraph 85 it is appropriate to release safeguarded land through a plan led process, although there may be circumstances to balance against that, as is the case with the interim policy. But Paragraph 85 supports the Council's approach of ensuring that the larger PAS sites come through the Site Allocations DPD process.

65. The Framework does not place housing delivery above all other considerations in the planning system. Indeed the "golden thread" of the Framework is sustainability, so it would be strange if the benefits of more housing automatically outweighed the need to ensure that the most sustainable sites are chosen for housing development.

Richborough Estates

[42] Summarised from the Council's closing submissions LCC9

Five Year Housing Land Supply

Requirement

66. H1 is the policy which set the housing target in the LUDPR. H1 refers to the RSS. There is no longer any RSS because it has been revoked. Therefore, there is no housing target in H1. There is a valid question over whether weight should be put on the RSS figure because of its evidence base. It is in the circumstances where the RSS evidence base has been the most up-to-date that appeal decisions have used RSS figures. That is not the case now in Leeds, because there is a more up to date evidence base in the SHMA and the Edge Analytics reports. The SEA on the revocation does not suggest that housing targets will necessarily rise. In any event, the SEA was written before the census established that the RSS forecasts were exaggerated. The appropriateness of relying on the draft CS figures, rather than the RSS figures, was entirely supported by the Horsforth appeal decision.

67. In these circumstances the appropriate housing targets are those set out in the draft CS. Although it has not been adopted, it is well advanced. There are objections, but they are in both directions. Assumptions cannot be made that the targets will move upwards, given the Edge Analytics report showing the need to recalibrate Leeds population base and that the 70000 is at the upper end of the range of forecasts of housing need[43]. Indeed the appellants are not challenging the 70000 target. The issues between the Council and the appellants are the backlog, the "step up" and whether the buffer should be 5% or 20%.

68. The "step up" is based on the most up-to-date evidence on household formation and need. The argument that Leeds should be providing as much housing as possible needs to be in the context of other planning considerations, including the plan led system and meeting objectively assessed needs. In any period the rate of household formation (headship rate) and therefore the housing land requirement will depend partly on economic conditions. That will be just as true of the 2008 headship rates as the 2011 ones. The difference is that the 2011 headship rates are the most up to date evidence, whereas the 2008 ones are not. The 2011 headship rate covers a period both of recession and boom. There is nothing in national guidance which suggests that the LPA should ignore the most up to date evidence, including recessionary factors. Indeed relying on the 2011 household projections follows the NPPG. The pre-census projections were unreliable, showing household projections that were significantly too high, probably because levels of international migration predicted for Leeds did not happen.

69. Reliance on the Horsforth decision in respect of the "step up" needs to be seen in the context that the Inspector said that it should be tested through the development plan process in the first instance and can carry little weight at this stage. However, that analysis cannot be correct in the current situation as the draft CS is based on the most up to date evidence, including the step up.

Richborough Estates

[43] CD9

70. In terms of the REM there are two points. Firstly, the REM is a forecast and is not based on current empirical evidence. Secondly, the REM is a very optimistic forecast. It assumes an average employment growth that would be equivalent to the highest level of job growth during the boom. The Experian (REM) growth of 2.1% is at the top end of national economic forecasts. It takes no account of the fact that 21000 jobs were lost in 2009. The CS housing figures are based on an employment led model. If there is a great deal of slack in the employment market, then that will inevitably affect the need for housing. The NPPG advises that where forecasts show volatility then it is appropriate to consider averaging. The REM model has swung from predicted job growth of 45000 to 65000. Therefore the step up is entirely justified on up to date evidence and should be taken as the target figure.

71. On the backlog, the SHMA is clear that pre-CS there was none. Suppressed demand is taken into account in the assessment of future need in the SHMA[44]. In respect of the period since the CS targets became relevant, any backlog which may have accumulated will be accounted for in the next five year land supply analysis which will take place with the benefit of a revised SHLAA and a more advanced site allocations process. The Council can then do what the Framework asks of it and remedy an identified backlog by moving deliverable land from later years into the next five year period. It is not possible for Leeds to be undertaking a running analysis of provision and supply through the year.

72. In terms of the buffer, Leeds was exceeding its housing land supply targets up to 2008/9. Then the RSS target stepped up, based on a seriously flawed prediction of population growth, and the recession took hold. The recession is highly relevant in judging "persistence". The failure to reach the target post 2008/9 in Leeds is the result of the recession and not of any historic recalcitrance. It is also relevant that for Leeds, as a large metropolitan authority with a great deal of brownfield land, the impact of the recession on the housing land supply was particularly severe. In accordance with national policy, Leeds prioritised regeneration and the use of brownfield land to provide housing, and that market for such housing collapsed in a very short period. It is only now that there are signs of city centre sites becoming viable again. None of the other decision letters relied upon by the appellants relate to local planning authorities which are in anyway comparable with Leeds, either in terms of the nature of the housing land available, the scale of the authority or the regeneration issues. To that degree Leeds is genuinely different, because it faces different challenges. It is also clear that Inspectors have been careful to look at individual circumstances in judging their approach to housing land supply[45].

73. The Council responded to the line of appeals that culminated in the Grimes Dyke decision[46] by releasing Phase 2 and 3 allocation sites, all of which were greenfield, and took a number of other proactive steps to increase the housing land supply. The Council has brought forward housing within its own control, putting £45m of Council capital into building new homes and a further programme for refurbishment of properties, many of which are currently empty,

Richborough Estates

[44] CD8
[45] Appendix B of R6.2 and Outgang Lane, Pickering
[46] ID7

as well as an active brownfield land strategy. Therefore, Leeds is not a recalcitrant authority

74. Imposing a 20% buffer would not have a material impact on housing delivery. The buffer is not intended to be a punishment, and to impose it in Leeds will simply lead to a disproportionate number of greenfield sites being released outside the plan led system. The evidence in Leeds strongly suggests that there is little or no correlation between the number of planning permissions, including those on green field sites, and the number of houses being developed. Completions in Leeds fell with the recession, and the large gap between permissions and completions had no impact on the level of completions[47]. The suggestion that this was because the permissions were brownfield and in the urban area is shown to be incorrect[48]. The large number of greenfield permissions after the Grimes Dyke appeal had little or no impact on completions. This is not just a timing issue, because it is still the case that sites which have been released are not coming forward. In reality house builders are picking and choosing the sites they wish to develop. That is entirely their prerogative as private sector developers, but it does show that at least in Leeds there is little direct relationship between the release of greenfield sites and an increase in housing delivery.

75. If permission is granted on more greenfield sites some extra housing may come forward, but this has to be balanced against the harm from a non-plan led approach and potentially inappropriate release of sites. However, Leeds is already in the position where a large number of greenfield sites have become potentially appropriate on the back of the interim policy on PAS sites. The policy was only agreed in March 2013 so it is unsurprising that its effect in terms of completions cannot yet be gauged in detail. The policy did not exist when the SHLAA partnership was assessing the sites. However, what it has done is provide a range of sites across the Leeds area as a choice for house builders and planning permissions have already been granted on the basis of the application of the policy.

76. It seems inconceivable that the house builders will in practice be able or prepared to build the number of houses in the next 2-3 years which would be required to meet the appellants' figures. This would involve stepping up from around 2000 this year, to around 6000 in the following years. This simply will not happen. Therefore the consequence of the appellants' arguments is that Leeds will not be able to deliver the five year supply, and it will continually be open to developers to pick off the sites in appeals. Such a consequence is entirely contrary to the Framework.

77. If Leeds has to provide for the extra 20% then there will be little choice for the Council but to consider releasing all the PAS sites in advance of the SAP process. This would be contrary to the development plan and to the principles of both sustainability and the plan led system. Retaining the local community's belief in, and engagement with the planning system, is very important. A release of this site at this stage would undermine the plan led system and encourage the development of relatively less sustainable greenfield land.

Richborough Estates

[47] See Figure 4 of LPA2
[48] See Figure 3 of LPA2

Although the appeal is about one site, house builders apply precedent to each successful appeal. This can be seen in the reliance placed by the appellants on the Grimes Dyke, Wetherby[49] and Horsforth appeals. House builders are acting in concert, and have created a housing consortium in Leeds. They are undoubtedly very quick to rely on each other's decision. If they try to put weight on the decision at Wetherby which concerned 4 houses and housing land supply was not even in evidence, then there can be no doubt whatsoever that the present appeal decision will be used as a major precedent.

Supply

78. For an authority as large and complex as Leeds, with a very large number of sites, it is simply inconceivable that the five year land supply can be calculated for each appeal. It is entirely appropriate that Leeds should rely on the annual calculation which follows the AMR and the annual SHLAA review. It is inevitable that the position will have changed since the last review in 2012. It is important to have clearly in mind that those changes will be both up and down. Much of Leeds' supply is on brownfield land in the city centre and urban area where viability fell away during the recession but where there are signs of the market starting to rise again. Viability has to be assessed in a systematic way through the SHLAA, and is also something which can change rapidly, particularly as market confidence rises. An example of a factor which may cause increased supply, which has not been assessed at all by the SHLAA, because it post-dated the last review and was not foreseen, were the changes to permitted development allowing of offices to move to housing. The Framework expressly promotes assessing housing land supply through a SHLAA process.

79. It is reasonable for Leeds to rely on the SHLAA Partnership to raise concerns about whether sites within the SHLAA and the five year period are appropriate. That is the function of the SHLAA membership. It may well be that there is some historic suspicion between different members of the Partnership, but if the house builder representatives thought that there were sites within the five year supply that should not have been there, then they should have said so clearly in writing. If they did not say so, then it is hardly open to them now to complain. The evidence produced by the appellants was one email from the two members of the SHLAA raising a specific concern, which as far as the Council was concerned, was then dealt with. It was only about one week before the Horsforth appeal proofs were due, that the house builders produced a detailed attack on the SHLAA five year supply. This is hardly the way a partnership is supposed to work, but also puts the Council in an impossible position. It is now advancing a new SHLAA and cannot undertake a new five year supply and AMR without this annual update process.

80. The Council does not dispute the figures in the appellants' evidence insofar as many of these sites are now unlikely to deliver as previous assessed through the SHLAA partnership, although at the time it was appropriate to include them in the five year supply. The Council in its AMR also points to a substantial level of supply that sits just outside of the current five year supply, but that with an improving market (particularly in the city centre/main urban area) will be

[49] ID11

Richborough Estates

deliverable now. These sites will be discussed with the SHLAA partnership over the coming weeks. They, along with further greenfield sites and releases, will help form the significant supply of land that the appellants say Leeds needs.

81. However, the appellants have wholly discounted the PAS sites and the sites coming through the SAP on the grounds that they do not fall within the Framework Footnote 11. In the context of an authority such as Leeds it is necessary to read Footnote 11 with realism and not as a statute. It is clear that Footnote 11 does not require that every site has to either have planning permission or be allocated. The NPPG makes this clear. It cannot be the case that every site has to be deliverable at the moment of the calculation, or it would be a one year land supply. The Council can point to the relevant sites, and say that of those sites sufficient will come forward in the five years as to meet the five year land supply. It may be that Leeds is relatively unusual. It is a very large metropolitan authority, but it is also in the process of undertaking its SAP. It is through this process that sites both for the entire CS period, but also for the next five years will come forward. There is no doubt that through that process Leeds will have to allocate enough sites to meet the CS requirements, and that this will necessarily require sites that fall within the Green and Amber ratings in the Issues and Options SAP. A proportion of these sites will plainly be capable of delivering housing within the next five years.

82. The appellants place great weight on the stage that the SAP has reached and the fact that it probably will not be adopted until 2016. However, the publication draft will set out those sites that the Council believes should be allocated, and that will be a Plan which the Council considers sound. Therefore considerably more weight can be placed on the SAP at that stage.

83. It is unreasonable not to count the PAS sites which the Council considers falls within the interim policy. These are greenfield sites which the house builders say they want to build upon, and which accord with the Council's view on sites which are suitable to be released now. There is no reason not to count them in the five year land supply. Similarly a proportion of the sites identified in the SAP will come forward in the next five years.

84. Doing the exercise as the appellants suggest it should be done, the following figures emerge. The Council say that the housing land supply is 21407 dwellings. Of these 689 units would be deducted as red sites in the SAP and 2188 units removed as identified by the appellants[50]. Some 900 units would be added as green sites in the SAP and a further 330 units included as part of the ongoing SHLAA exercise. This leaves a total of some 19760 dwellings which is not far below the five year land supply requirement. However, it is not appropriate to do this exercise at this stage in the SHLAA process.

Prematurity

85. The appellants place weight on the General Principles document and the scope of prematurity. However, the Council did not refer to this document in their putative reason for refusal but to the specific policy in relation to safeguarded land, Policy N34. This is a different situation from the general policy on prematurity. This land was only placed in N34 on the basis that its suitability

[50] Page 47 of APP2 and ID24

Richborough Estates

for development would be considered through a development plan process. It is therefore this policy which lies at the heart of the Council's reasoning, not the General Principles document.

Interim Policy

86. The interim policy has two points of relevance in this appeal. Firstly, its role in bring forward PAS sites before the DPD; and secondly, whether the site should have been granted planning permission in the light of the policy in any event.

87. The interim policy has to be seen for what it is, i.e. not an adopted policy, but a series of publicly stated criteria or considerations. Like any policy it must be applied sensibly on each specific application and there may be grounds to depart from the policy. The appellants accepted that it is a good thing that these considerations are publicly stated in that it helps both transparency and consistency. The key question then is whether those are material planning considerations which it is appropriate to have in mind when making the relevant determination.

88. There are two underlying purposes behind the interim policy, to allow the most obviously sustainable sites to come forward before the Site Selection process, and to do the minimum harm to the Plan led system. Both these purposes are entirely in accord with the planning principles set out in the Framework. Despite the appellants' criticism, the interim policy is working to bring forward PAS sites to help meet the five year land supply with permissions already granted and more applications in the pipeline.

89. Criterion (i) is clearly based on finding what are likely to be the most sustainable sites. In relation to the 10ha criterion, (ii), it is obvious that it is the largest sites where it is most important that they come through the Plan led system i.e. SAP. Those are the ones which will have the greatest impact on sustainability, because they will generate the largest number of trips and take the most greenfield land. Any specific figure will be a "bright line" with cases falling on either side. It is inconsistent that the "area" test in criterion (iv) is criticised because it is not defined but the 10ha is attacked because it is too rigid. It makes sense to have a definition of a large site, i.e. over 10ha, but that does not stop the Council considering the position if two or three 9ha sites come forward at the same time and saying that, in practice, it triggers the concerns in the interim policy and having regard to cumulative impact. The appellants' reliance on the 9ha sites merely shows the benefits of waiting for the SAP, and carrying out a systematic consideration of all sites being proposed. Criterion (iii), that the land is not needed for alternative uses, is clearly reasonable and would have to be a material consideration in any event.

90. Criterion (iv) involves an exercise of planning judgement as to what is the appropriate area. That is not a fixed distance, because the aim is to consider whether there is a choice of sites with an area that relates to where people would choose to live, i.e. related to communities such as Farsley and Rodley. It is difficult to see what is objectionable about leaving such a judgement to Planning Officers in the light of the characteristics of the particular area. The extent of the area will inevitably vary across the city.

91. Criterion (v) involves another set of judgements that can only be carried out on a site specific basis. The facts here show that what the appellants are offering

Richborough Estates

is merely what would be required of them in any event, and they are not addressing any wider infrastructure need.

92. In respect of the land for the school, two points are important. Firstly, the school land would be required under Policy N34 in any event. The Council is clear that there is a need for a new primary school in this area, and the site's own education need means that a school would need to be provided. Therefore, there is no additional benefit in reserving the land. Secondly, the S106 only requires the owner to sell the land to the Council at compulsory purchase compensation value. This means in practice open market value ignoring the scheme. The owner will undoubtedly argue that the open market value is residential land value, because this is PAS land, and they have an expectation of getting residential planning permission. If that is the case the appellants are giving no benefit to the Council, as they will get the full residential value of the land in any event. The Council is likely to argue that the land value is educational value, because the land must be reserved for a school under N34 and the evidence of school need. It is not possible to be definitive at this stage on what the precise value will be. But the critical point is that, whatever the ultimate value is, the Council is getting no benefit out of this transfer because it is paying the open market value of the site, however that is calculated.

93. On affordable housing, again the appellants are merely meeting the terms of the interim affordable housing policy. There is no linkage to a brownfield site, and no ground to take the view that criterion (v) is met. The appellants' reliance on the Spofforth Hill, Wetherby application[51] is misconceived. No decision has been made on that site, and there is a debate going on in the Council as to how to deal with the proposal.

Conclusion

94. For all these reasons the appeal should be refused.

The Case for Farsley Residents Action Group (FRAG)

The material points are[52]*:*

Highways

95. FRAG has endeavoured to provide the "local knowledge" required to build an understanding of the issues associated with the road network. The appellants have not sough to adopt the guidance contained with the Street Design Guide SPD but instead have relied upon MfS.

96. The appellants have attempted to undermine the photographic evidence put forward by FRAG. FRAG's evidence has captured the considerable queue lengths at two approaches to the Rodley Roundabout and suggests that the impact of the development would be severe. Moreover, it should be noted that FRAG's concerns about Rodley Roundabout are borne out by the points raised by the manager of the Pinch Point bid[53]. Although the appellants suggest that the

[51] CD22
[52] Summarised from FRAG's closing submissions FRAG7
[53] In response to the Government's Local Pinch Point Fund to remove bottlenecks on the local highway network which are impeding growth

Richborough Estates

improvements would reduce traffic queues, the Pinch Point application indicates that the works would merely mitigate the impact of traffic from the development. There is no guarantee that the Pinch Point application will be successful, as it is the last of the funding tranches and it already failed in its Tranche 2 bid.

97. The Pinch Point bid was submitted prior to the release of higher 2013 traffic counts which showed a 21% growth in traffic within the peak hour along the A6120 South between 2011 and 2013. On this basis it is questionable as to whether the signalisation of the roundabout is suitable. In addition the SAP has the potential to identify a number of key employment sites within the area with the nearby Leeds Bradford Airport acting as a key driver. This does not appear to have been considered by the appellants.

98. The two lane improvement on the Horsforth exit would narrow to one lane in order to cross the bridges over the canal, River Aire and railway. No thought has been given to the significant funding issues that would need to be addressed should the road need to be widened over the bridges. The 2019 design scenario already indicates that the bridge crossing points will be close to capacity. The expectations for growth of the airport will fill the remaining capacity. When this saturation point is reached tailbacks will occur at the roundabout, whether it is signalised or not, with severe congestion at one of the main arterial junctions on the highway network.

99. The evidence of FRAG indicates that the development would have a severe and adverse effect on Rodley Roundabout creating highway problems that would be contrary to Paragraph 32 of the Framework. The worsening situation will create dangers and delays, impeding emergency vehicles and public transport.

100. Although not dealt with in FRAG's closing submissions, their evidence also covered the following highway concerns, some of which have been also raised by local residents:

- Capacity issues at the Dawson's Corner, exacerbated by car park improvements to New Pudsey Station and the new traffic signals on Bradford Road;
- Increases in use of the Old Road/Bradford Road, Farsley junction but no improvements proposed, either at the junction or zebra crossing;
- Issues of rat-running along Canal Road and Bridge Road, Rodley;
- Backing up along Bagley Lane, Rodley;
- Concerns about the suitability of changes to Calverley Lane, including the narrowing outside the recreation ground and its impact on on-street parking and safety;
- The safety of the Calverley Lane/Ring Road crossing point, if traffic speeds and flows increase due to changes at the Rodley Roundabout. The improvements proposed to the crossing are minimal;
- Pedestrian and cyclist safety concerns arising from the proximity of the proposed footway/cycleway alongside the ring road;

Richborough Estates

- Increased vehicular use of Town Street Farsley which has only one pelican crossing point; narrow footways; and a carriageway width reduced by parked cars;
- The suitability of the Poplar Farm estate as a vehicular access to the development, given the width and residential characteristics of the approach and taking into account the Street Design Guide SPD.

Sustainability

101. The site is at the boundary of what constitutes a demonstrably sustainable location being 10 minutes walk to the northern edge of Farsley Centre with facilities such as the post office, supermarket and pharmacy further away. The Local GP indicates that the practice could not accommodate any more patients.

102. The site fails to meet the criteria in relation to accessibility to public transport as set out in the relevant SPD[54] in that it is not within 400m of a bus stop with a high frequency bus service to a major transport interchange. The only high frequency bus service to Leeds City Centre takes a very circuitous route with an average journey time of at least 50 minutes. The site is not within 800m of New Pudsey Railway Station, the journey taking at least 30 minutes.

103. FRAG considers that the development would be heavily car dependent, contrary to the principles of sustainability set out in the Framework.

Drainage

104. The appellants' modelling of site drainage does not take into account the unusual properties of the soils on Kirklees Knoll. The subsoil is extremely impermeable and will shed a high percentage of rainfall. There is also some uncertainty as to the appropriate rainfall values that have been used in the run-off model. Permeability and rainfall are the only variables input into the model. If these values are inaccurately defined the establishment of viable SUDS is questionable. Moreover, soil compaction during the construction phase has not been taken into account. This factor would increase run-off and the risk of excessive surface water discharge. The local combined sewer system does not have the capacity to accept any surface water.

105. The existing public sewerage system does not function effectively. Whenever there is excessive surface water in the area raw sewage is released, polluting local watercourses.

106. The appellants gave assurances at the inquiry into the Poplar Farm development that flood risk would be low. However, photographs and local residents' statements indicate that flooding has occurred despite a drainage condition being imposed. As similar values and modelling took place with the appeal site, extreme doubt should be placed on its veracity.

Conservation, Landscape and Coalescence

107. The villages of Farsley and Rodley have developed very differently so that there are two disparate and independent villages. The appeal site provides a very clear

[54] CD26

Richborough Estates

separation between the villages. This was recognised by the LUDPR Inspector in 2006 who saw the site as having important Green Belt attributes.

108. FRAG has shown that the view across Kirklees Knowl from Calverley Lane is a very open one and is highly valued by the local community. The appellants' visual assessment fails to fully appreciate the impact the development would have from Calverley Lane, the recreation ground, Public Footpath No 18 and St Margaret's Church, Horsforth on landscape and views. The Framework emphasises that the planning system should protect and enhance valued landscapes.

109. The site adjoins Farsley Conservation Area and contributes to the character and setting of the recreation ground which is within the conservation area. It is also a key constituent of one of the main gateways into the conservation area. The CA Appraisal recognises that development around the conservation area should not spoil its setting.

Prematurity

110. The Issues and Options SAP received some 5000 to 6000 responses to the public consultation process. The appellants' development would represent 66% of the 594 additional homes for the Farsley area which are being consulted upon. It would also be the largest site in the Outer West HMCA. Granting planning permission now would render the public consultation process worthless and would undermine public confidence in the planning system, contrary to the principles of the Framework.

111. FRAG does not feel that the impact would only be on a small area. On the one hand the appellants state that the release of the site is crucial because of the significant positive impact but on the other hand argues that the impact would be sufficiently minimal so as not to be refused on grounds of prematurity. The two arguments are not compatible.

112. The Issues and Options SAP states that the site should be considered alongside two other PAS sites nearby and refers to the LUDPR Inspector's comments on the contribution that the site could make to Green Belt purposes. Paragraph 85 of the Framework reiterates the Inspector's stance that the site should be considered following a local plan review.

113. The application is wholly cynical and opportunistic and makes a mockery of public consultation and the plan led process.

The Case for Interested Parties

i) Local Residents

114. Thirty four local residents spoke against the proposal at the inquiry. The material points made were:

- *Sustainability* – The development is not good sustainable development as demonstrated by the detailed impacts.
- *Prematurity* – The allocations plan is not finished. The site is protected under the current development plan. The roundabout will also allow development to the west of Calverley Lane.

Richborough Estates

- *Social Cohesion* – There is pride in the local village communities. The development would threaten this cohesion. Crime and disorder could occur, particularly on narrow pathways created by the development which would also provide escape routes for criminals. There will be limited opportunity for affordable homes for local people.

- *Education, Health and the Police* – The three schools are over-subscribed. Extensions to the schools will not meet the need. With more houses, there is less chance of locals getting their children into nearby schools. The pupil appeal process is stressful. Childminders are also bursting at the seams. The one GP surgery has a waiting list and no room for any more patients. Appointments are often not available for some time. It is often necessary to go to A & E. Dentists would also be affected. The police are also stretched.

- *Highways* – The Bradford and Leeds conurbation has had the greatest growth in congestion in the country. There is congestion and grid lock at Rodley Roundabout, Dawson's Corner and on the ring road generally. This has a number of effects. There is backing up down Bagley Lane, often for upto 1km. A bus was witnessed taking 18 minutes to travel 450m towards Rodley Roundabout. People use rat runs through Farsley and along Canal Road and Bridge Road in Rodley. This has an impact on pedestrians and cyclists, particularly those wishing to access the safe route along the canal or cross the main routes. Frustration occurs which can lead to unsafe manoeuvres, accidents and impacts on commuting, with drivers taking circuitous routes. The Clariant Works development has not helped. The development would make matters worse. The works to Rodley Roundabout, including the provision of two lanes, would not make a difference.

  Calverley Lane would be more dangerous, particularly on the brow of the hill near the recreation ground. Children would be especially at risk. In Farsley Town Street vehicles already park on both sides. The pavements are narrow. You often need to step onto the road, particularly when pushing a pram. It is difficult to cross Town Street and more development will make it worse. The elderly will be discouraged from going out. Buses have difficulty travelling through the village. On-street parking has occurred at recent developments such as that in Coal Hill Lane. The same would occur within the proposed estate. Access for refuse and emergency vehicles would be difficult. The cycle path along the ring road would not be attractive or safe for cyclists or pedestrians.

- *Drainage* – A new culvert, as part of a flood alleviation scheme, was constructed nearby but flooding still occurred in the area in 2002 and 2007. Surface water flooding has occurred from the Poplar Farm development. This has led to ponding in Bagley Lane and insurance being cancelled due to floodplain issues. The combined sewers are unable to cope with storm conditions. It is a Victorian brick-built system with narrower pipes at the junctions. Sewage overspill tanks built in recent times reach capacity and sewage backs up and has been seen in Bagley Beck and the River Aire. The development would drain towards Rodley and Bagley where these problems have occurred. A small housing development was refused a few years ago on drainage grounds.

Richborough Estates

- *Character and Appearance* – The Green Belt between Bradford and Leeds is of limited width and the proposal will impact upon it. The development would ruin the local environment, leading to coalescence between Farsley and Rodley and urban sprawl. The balance in the Aire Valley between development and greenspace with separate settlements would be affected. The site allows lovely views from Calverley Lane, the recreation ground and elsewhere over the Aire Valley. The site also offers a free natural resource for residents, particularly children, who need to be able to experience wildlife and farm animals close at hand. Brownfield land should be built on as a priority.

- *Environmental Issues* – The development will increase noise from traffic for local people. Lighting will affect residents. Dust, noise, general disturbance and odours would all occur during construction.

- *Agriculture* – The land is an opportunity to provide British produce locally. The viability of the farm will be affected.

- *Recreation Ground* – The ground provides an opportunity for gentle exercise, including for those with mobility problems. The narrowing of the road and potential loss of parking will make level access to the recreation ground difficult.

ii) Stuart Andrew MP

115. Mr Andrew spoke against the proposal making the following material points:

- *Plan led system* – Planning is a significant issue in the area and evokes strong feelings. The community has been proactive in engaging in the local plan process. A number of sites have been proposed in the Farsley, Rodley and Horsforth area to meet future needs. There is a need to look at this site and the others in a sustainable way as part of the local plan process. The Local Plan has been put in draft form to the SoS. The Planning Minister has said that such a plan should carry weight in decisions[55]. The process is put at risk by an opportunistic application which would not achieve sustainable development and has bypassed the LPA.

- *Five Year Housing Supply* – Housing supply is being addressed by the Council.

- *Specific Impacts* – The communities, although part of Leeds, are distinctive towns and villages. They should not be subsumed into the suburbs by urban sprawl. The congestion and safety issues on local highways would be exacerbated by the development at Clariant Works and on the appeal site. There are capacity issues with local schools.

iii) Councillor Joseph Marjoram

116. Councillor Marjoram is a Ward Councillor for Calverley and Farsley who is not opposed to the principle of releasing PAS land and developing the site but is concerned about the scale and made the following other material points:

- *Five Year Housing Supply* – It is clear that LCC do not have a five year supply of housing and in this respect the Council has not had an appeal decision in its favour. Unimplemented planning permissions do not necessarily constitute an

[55] FRAG3

Richborough Estates

achievable land supply as many will never be built. The PAS sites need to be part of that supply and some should be released based on a sequential approach which puts sites in the following order – brownfield, regeneration, PAS and Green Belt. Land banking is a rational response to the lack of supply.

- *Status of the site* – It is not credible to say that Kirklees Knowl is the same as Green Belt. It does not compare with the Leeds/Bradford Gap or the Aire Valley. The site is part of the urban area within the ring road.
- *Interim PAS Site Policy* – There is no logic to a 10ha threshold. Why not 9 or 11ha? The scale of ownership is unrelated to sites coming forward. There are 8000 people in Farsley. The development could accommodate existing residents, others with local connections and those interested in the area, including the economically active.
- *Specific Impacts* – Adequate education provision depends on a new school rather than extending existing facilities but the delivery of the new school ultimately is down to the Council. Rodley Roundabout needs a signalised scheme which would address pedestrian safety. There will be an impact on Bagley Lane and Rodley Road. Better connectivity at the Calverley Lane/ring road junction would be achieved by a footbridge.

iv) Sandgate Residents Action Group

117. Mrs Payne spoke on behalf of the above group which was formed in response to a planning application by Persimmon Homes on a 10ha PAS site in East Leeds. She made the following material points:

- *Interim PAS Site Policy* – The interim policy is supported. Its content is reasonable and it will prevent the release of such sites prematurely.
- *Plan led system* – Residents groups want to actively engage in the local and neighbourhood plan processes. The outcome of the CS is still unknown, including the housing figures which many people feel are too high. Consultation on the SAP will allow consideration to be given to the most appropriate and sustainable form of development to meet the housing figures. Otherwise there is a bizarre race with developers trying to get past the winning post and circumvent the plan led process before it is completed.
- *Impacts* – The residents' groups share the same concerns about sustainability, school and health provision, transport, access, green space and the character of the areas.

Written Representations

118. Written representations were made by **local residents** at both application and appeal stages[56]. The vast majority raised objections to the proposal. Many of the points have been covered in the cases of FRAG and local residents set out above. The following additional material points were also raised:

- *Principle of development* – Land between Leeds and Bradford should be considered comprehensively as part of the respective development plans. Developing the site would set a precedent for land within the ring road. The

[56] 388 responses at application stage, 263 at appeal stage

Richborough Estates

site should be returned to Green Belt. The development would lead to the affected villages losing their identity

- *Housing Need* – Farsley has already made its contribution to housing targets in Leeds. The vast majority of homes will not be affordable for local people. There is no need for more houses given the number of empty properties and homes for sale.

- *Sustainability* – There is a lack of local jobs so residents would need to travel elsewhere with limited benefit for local businesses. Access to public transport services would be poor. There are few remaining facilities in Rodley.

- *Highways* – The use of Poplar Farm Estate as an access fails to have regard to the inadequate estate roads with 5.5m carriageway widths. The estate would be used as a cut-through to the ring road. This would affect the safety of children walking to school. Construction traffic would also access the ring road via Rodley and other routes, causing dangers. Access by other routes than Calverley Lane is likely due to the inability to turn right at the junction with the ring road. Drivers would also seek to avoid existing and proposed traffic calming. Access difficulties also arise during the winter in bad weather. Priesthorpe Road would also be used as a cut-through to the ring road but is narrowed by parked cars which make it dangerous for all users.

- *Environmental Issues* – The site is used by deer, foxes, bats and a range of birds and other wildlife all of which would be affected by the development. Trees and hedgerows would be lost. The loss of the site would have an adverse affect on local residents' well-being. Public open space under the high voltage electricity lines would be unsuitable.

- *Water Supply* – The development would have an impact on water supply pressures which are already unpredictable.

119. In terms of support, the material points were that there is a need for houses and the development would benefit local businesses.

120. Written representations were also made by **Stuart Andrew MP**, the **Ward Councillors** and separately **Councillor Joseph Marjoram**. The comments of the Ward Councillors and Councillor Marjoram are covered in the cases set out above. The additional points made in writing by Mr Andrew were:

- The site should be returned to the Green Belt. It is farmed land, forms part of important public views and has historical significance by providing separation between communities. The development would impact on trees and wildlife.

- There is more than a five year supply of housing in this particular area of Leeds. Brownfield sites should be the priority.

- Traffic calming in the vicinity of the site would be impractical and counter-productive.

121. Written representations were made on behalf of the owners of land on the opposite site of Calverley Lane, **Gaunts Limited** and **Ian Driver** (GID). The material points made were:

Richborough Estates

- PAS land opposite is to be subject to an outline application for around 70 homes[57]. The view is that the proposal is fully compliant with the interim policy on the release of PAS sites. The site is in separate ownership from the appeal site, is severed by Calverley Lane and would be a development of much smaller scale, with different access requirements and with no relationship with the built-up area of Rodley.

- There was an implication that the roundabout to the appeal site could also be used as an access to the GID land. This is not the case as there is an easement around the electricity pylon on the GID land. A separate access from Calverley Lane is proposed which is subject to an in-principle agreement by LCC[58]. It is considered that both sites can be satisfactorily accessed independently. However, there are concerns if any proposed access solution for the appeal scheme would prejudice access to the GID land.

- There is agreement that there is a need for additional housing within Farsley. However, as the site is in excess of 10ha it would not meet Criterion (ii) of the interim policy and there is no evidence that criteria (iv) and (v) are met. The proposal would amalgamate the separate settlements of Rodley and Farsley with their strong community identities. The appeal site should be considered through the Local Plan process. The proposal is premature.

Obligations

122. The planning obligations referred to in paragraph 6 of this report have been supported by statements by the Council and appellants[59]. In terms of the S106 agreement the Council makes the following material points in relation to Section 122 of the CIL Regulations:

- *Affordable Housing* – The need for affordable housing is set out in the LUPDR and SPG3. The SPG forms the basis for the Council's approach to affordable housing. However, an interim housing policy was approved by the Executive Board in May 2011. This interim policy was introduced to help boost house building and proposed a significant reduction in the percentage of affordable homes required as part of a development. The S106 agreement will deliver 15% of the total number as affordable dwellings, either through being built on site or as an equivalent contribution off-site, in accordance with the interim policy.

- *Education Provision* – SPG11 sets out the Council's approach to securing contributions to the improvement and maintenance of schools. The SPG sets a development threshold of 50 dwellings. The development generates requirements for both primary and secondary school contributions based on a formula and taking into account capacity issues in local schools. The primary school element would be used either to expand existing schools or as a contribution to the delivery of a new primary school. The secondary school element would help to maintain and improve existing schools. The contributions would be phased to accord with delivery of housing numbers.

Richborough Estates

[57] An application for 70 dwellings has now been submitted to the Council
[58] Shown as a T-junction to the south of the proposed roundabout
[59] LCC8 and TE8

- *Greenspace contributions* – SPG4 deals with the delivery of on-site greenspace and, where necessary, securing contributions to off-site open space in the form of neighbourhood and major city parks. The appeal proposal will provide areas of greenspace which will need to be maintained and generates a requirement for off-site contributions. The agreement follows the formula in the SPG and outlines reasonable timescales or delivery of on-site open space and contributions to off-site parks.

- *Public Transport Contributions* – There are three elements to this. The payment of a contribution to improve bus stops near the site; the payment of a public transport improvement contribution; and implementation of the Travel Plan[60] recommendations, including provision of Metrocards. The bus stops to be improved are well related to the site. The works would help promote public transport as a travel option. The public transport contributions are supported by the relevant SPD and will help to deliver improvements which will reduce the need to travel by private car. The Travel Plan will also help in shifting people from private cars to other means of travel. The contribution for Metrocards has been based on 75% take up which reflects citywide figures. The Travel Plan fee would help the Travel Wise Team monitor the implementation of the Travel Plan.

- *Off-Site Highway Works* – The improvements to the Rodley Roundabout are necessary to make the development acceptable in road safety terms. However, the Council's signalisation scheme, for which funding is currently being sought, would make the appellants' proposals for the roundabout non-implementable. The provision of a contribution towards the signalisation scheme is reasonable and would be comparable with the necessary works.

123. The appellants support the UU by reference to the following material points in relation to Section 122 of the CIL Regulations:

- *Mechanism* – The UU reserves part of the site from development whilst the Council decides whether or not some 2ha is required for the provision of a two-form entry primary school. The land will be reserved for seven years from the grant of outline planning permission or four years from the final reserved matters approval. It would be a serviced plot. The land will be offered as if it were being compulsorily acquired which would be no different to the Council using such powers under the Education Acts. In this respect allocation of part of the appeal site for a school would not make a difference to the value.

- *Need for School* – The Council's putative reason for refusal 1 on prematurity referred to the need for a school. The obligation is a means of addressing that issue. The CIL tests are satisfied by this reference to the Council's position rather than from the need for the school arising solely from the development.

124. The Council accepts that the UU resolves that part of the putative reason for refusal relating to the school but does not accept that the land would necessarily attract residential value. However, that is a matter for another day.

[60] DOC8

Richborough Estates

125. The Council also considers that the appellants should commit to building a reasonable number of dwellings within the current five year supply period, if release of the site is justified to meet the land supply position. Building 50 dwellings per year following the discharge of conditions would be fairly and reasonably related to the implementation of the development. The recommendation to the SoS could be that permission is not granted without such an agreement or undertaking.

126. The appellants understood from discussions that the obligation was to build homes within five years, not as it is put now, tied to the discharge of conditions. However, the appellants are landowners, not house builders and would have to go to the market. By comparison the Poplar Farm development received outline planning permission in 2010, was put straight to the market, reserved matters approval was obtained and it was built out by 2013. Whilst not closing the door to the idea, 50 dwellings would be the top end of what could be delivered and it is a somewhat unusual request.

127. FRAG point out that the number of bus stops to be improved is less than that requested in the original consultation response from Metro. The public transport contribution is less than that required by the SPD. Metro Cards should be provided at 1 per household and to cover both bus and rail. Consideration should be given to the provision of a pedestrian crossing in Town Street, Farsley and measures to curtail rat-running on Canal and Bridge Roads.

Conditions

128. The Council submitted a list of conditions[61] which had been largely agreed by the appellants and were discussed at the inquiry, in the event that the appeal is allowed. The conditions deal with the need to submit reserved matters and commence the housing development within the relevant timeframes. A separate condition specifies the timeframe for the submission of reserved matters for the primary school linked to the period of seven years in the UU. The appellants consider that this period should be extended to ten years as the primary school might be linked to a later phase of the development whereas the Council suggest that eight years would be a reasonable compromise. A condition requiring phasing would allow the development to progress in appropriate stages.

129. A construction management plan condition is suggested to safeguard highway safety, living conditions and prevent pollution of watercourses. Conditions are proposed requiring further details and timing of highway works in Calverley Lane and elsewhere. The highway works in Calverley Lane would also need trees and hedges to be suitably protected. A condition is required to ensure the submission of a drainage scheme, including SUDS, and its phasing taking into account the two catchments. Flood risk alleviation measures are also necessary in accordance with the recommendations of the Flood Risk Assessment[62]. Further intrusive investigations for contamination and coal workings are

[61] LCC7
[62] Contained within Appendix 13.1 of the Environmental Statement – DOC2

Richborough Estates

required on the site, following the Phase 1 Desk Study[63] and recommendations contained within the Environmental Statement[64].

130. The appellants, whilst accepting that sustainability measures should be incorporated within the development, consider that these should not be as prescriptive as framed in the proposed condition. The relevant SPD is discretionary, not mandatory. The Council consider that the adopted SPD requirements are sufficiently precise and are in the context of Policy GP5 of the LUDPR and policies of the emerging CS. Conditions requiring bat mitigation measures, biodiversity protection and enhancement and safeguarding of birds are proposed. There is Japanese Knotweed and Himalayan Balsam on the site which need to be eradicated.

131. Discussion took place about the possibility of improving Public Footpath No 18 and the pedestrian link to Kirklees Estate. The appellants pointed out that they are outside their control. The Council has powers under the Highways Act to facilitate improvements to footpaths. The ownership and status of the Kirklees Estate link was unclear.

Richborough Estates

[63] Contained within Appendix 12 of the Environmental Statement
[64] Chapter 12, paragraph 102

Conclusions

The numbers in square brackets [ ] *refer back to earlier paragraphs which are relevant to my conclusions.*

Main Considerations

132. I have identified the main consideration in this case to be:
Whether planning permission should be granted, taking into account local and national planning policies on the delivery of housing, including:
(a) the release of sites in the context of the spatial strategy for Leeds; and,
(b) the need for a five year supply of deliverable housing sites.

Spatial Strategy

The existing development plan

133. The LUDPR is the development plan for Leeds but was adopted in 2006. Its strategy, including that brownfield land should be developed in preference to greenfield sites, was based on national policy at the time[65] and an RSS housing requirement of an average of 1930 dwellings per year. The housing requirement increased with the review of the RSS in 2008 so that it stood at 4300 dwellings per year. Since then the need to release allocated greenfield housing sites was recognised in a string of appeal decisions followed by the Council's release of further Phase 1 and Phase 2 sites allocated by Policy H3 of the LUDPR [*IR73*].

134. Policy N34 protected land not envisaged to be needed for development in the period covered by the housing policies of the LUDPR (2003-2016) but with the intention that such land would be available for longer-term development needs [*IR17*]. Given the objectives of the policy and the number of sites subject to PAS, it was appropriate that the reasoned explanation indicated that the suitably of protected sites for development would be comprehensively reviewed as part of the preparation of the LDF.

135. Paragraph 85 of the Framework, although related to the definition of Green Belt boundaries through Local Plans, proposes a similar approach for "safeguarded land" between the urban area and Green Belt. The appeal site is still protected by development plan Policy N34 and the appeal proposal is contrary to the provisions of the policy [*IR17*]. I will deal with the extent that the policy can be considered up-to-date when I come onto my overall conclusions.

The emerging development plan

136. The emerging CS is based on the policies and overall vision of the now revoked RSS. In addition it is intended to support and facilitate the Leeds Growth Strategy. This Growth Strategy is consistent with one of the core planning principles of the Framework, proactively driving and supporting sustainable economic development, and the objective of boosting significantly the supply of housing.

Richborough Estates

[65] Planning Policy Guidance 3: Housing

137. The Council has undertaken an assessment of need using a SHMA and related reports [*IR66*]. This evidence base is more up-to-date than that which underpinned the RSS. The CS includes a requirement to provide 70000 (net) new dwellings between 2012 and 2028. Although not markedly different to RSS requirements which flowed from Policy H1 of the LUDPR, a "saved" development plan policy, I consider that it is appropriate to use the CS total housing requirement in that it reflects both objectively assessed need and current national and local housing growth strategies. The appellants accept that around 70000 dwellings is a reasonable requirement for the CS plan period [*IR67*].

138. The Council needs to find sites for around 34000 dwellings [*IR21*]. The Council proposes that the considerations within Policies SP1 and SP6 will be used to achieve the distribution of housing set out in Policy SP7. The Council accepts that housing development will need to take place on urban extensions on greenfield land adjacent to the MUA and major settlements as well as infill. The proposal constitutes an urban extension on greenfield land adjacent to the MUA.

139. The approach to the location of housing development is reflected in the Issues and Options SAP which considers PAS land and the need for a selective review of Green Belt sites under Policy SP10 of the CS. Moreover, the Council has been prepared to release some PAS sites in advance of the publication of a Draft SAP to boost housing supply [*IR22*]. In terms of the Outer West HMCA, the emerging strategy indicates that sites for some 2660 dwellings will need to be allocated. The Issues and Options SAP shows Green and Amber sites in the same area with a capacity of 3515 dwellings.

140. The considerations set out within Policies SP1 and SP6 cover the main impacts of the development raised at the inquiry. I attach some weight to these policies as they have reached examination stage and they are reasonably consistent with the core planning principles of the Framework. I will deal with the relevant impacts referred to within Policies SP1 and SP6 in turn in considering whether the site should be released in the context of the emerging spatial strategy for Leeds.

Richborough Estates

PAS Interim Policy

141. Although not a development plan policy and something to which I can attach limited weight to, I have also taken the PAS Interim Policy into account on the basis that it represents a pragmatic approach by the Council to ensuring an ongoing supply of housing land pending the publication of the SAP.

142. The proposal would meet Criteria i) and iii) of the PAS Interim Policy now that land has been safeguarded for a primary school. The site exceeds 10ha so Criterion ii) would not be met and, as a result, consideration need to be given to Criteria iv) and v). In terms of iv), "area" is not defined but there are some significant developments in the vicinity of the appeal site such as Clariant Works to the north which lies within the North Leeds HMCA but there appear to be more limited opportunities within the Outer West HMCA. The evidence about whether housing land is demonstrably lacking is inconclusive, particularly as criterion iv) lacks clarity.

143. There are some benefits arising from the development. Those relating to highways infrastructure are necessary for the development to go ahead, although the footway/cycleway along the ring road, in particular, would be of

wider benefit. The affordable housing provision is of benefit but is not directly tied to the redevelopment of a brownfield site and does not exceed the current 15% target. The provision of a primary school would address an infrastructure deficit. However, overall, although CIL compliant, the planning benefits are not, in my view, significant (Criteria v)).

Sustainability

144. Although Policy SP1 indicates that priority will be given to previously-developed land and infill sites in identifying land for development, greenfield land comprising sustainable extensions to settlements is also recognised as being suitable. The appeal site is adjacent to settlements within the MUA [*IR17*].

145. There are a number of bus services within walking distance of the site providing links to Leeds and Bradford as well as other more local destinations. However, most are further than 400m away, some of these services are infrequent and the nearest route to Leeds is circuitous. The railway station at New Pudsey is 30 minutes walking distance or more from the site such that it is unlikely that many residents of the site would access it by foot [*IR102*]. Access by cycle or bus would be possible but most residents of the site would be likely to reach the station by private car.

146. The northern end of Farsley town centre is some 10 minutes walk from the site. There are some local employment sites nearby. However, the convenience store, post office, doctor's surgery, dentist, schools and larger employers are further away. Rodley and Bagley have limited facilities. Larger shops such as those at the Owlcotes Centre are beyond the railway station.

147. The proposals to improve local bus stops, provide Metro Cards and pay a public transport contribution [*IR122*] are measures which would have the potential to encourage use of public transport. The latter is based a modal split applied to the formula within the relevant SPD[66]. The provision of footways and cycleways within and beyond the development would enable access to local services other than by private car [*IR14 and 15*].

148. The site is not within an area at risk from flooding. The scheme would incorporate a sustainable drainage system [*IR58*]. Other sustainability measures could be included within the development.

149. The off-site improvements and measures within the development would have some, albeit limited, effect on residents' propensity to use transport modes other than the private car, given the site's relationship to public transport and local services. I note the position in SOCG2 as to the sustainability of the location and the agreed position in relation to the Poplar Farm site [*IR57*].

150. I conclude that, despite some of the deficiencies in public transport provision and the walking distances to services, the proposal would constitute a sustainable development and would comply with Policies N12, T2, T5 and T2D of the LUDPR in this regard. In arriving at this conclusion I have had regard to the accessibility criteria within the relevant SPD [*IR102*] and emerging CS Policy T2 but also to the site's proximity to the MUA, existing development and the settlements of Farsley, Rodley and Bagley.

[66] Mr Owen's evidence in response to Inspector question

Richborough Estates

Educational and Health Infrastructure

151. Local schools appear to be close to capacity and there was evidence given at the inquiry about difficulties of getting places [*IR114*]. LCC has identified the need for at least a 1 Form Entry Primary School in the area[67] based on existing and proposed demands, including the appeal site. The Council has not identified a site. The appellant has responded to this need by safeguarding 2ha of the appeal site for a school [*IR32 and 123*]. In addition a financial contribution would also be made [*IR122*]. On the basis that the Council is satisfied that this mechanism overcomes its concerns about education provision, the proposal is acceptable in this regard. The issue of the value of the site and how this would affect the school being brought forward is not a matter for this appeal, suffice to say that the UU includes valuation mechanisms.

152. Although concerns have been raised about the ability of the local doctor's and dentist's surgeries to cope with additional patients [*IR114*], neither LCC nor the health authorities have raised this as an issue. On this basis, lack of health care provision would not be a reason to resist the development.

Highways and Drainage Infrastructure

153. The ring road and its major junctions at Rodley Roundabout and Dawson's Corner are busy, particularly during morning and evening peaks. I experienced this during unaccompanied site visits. It is understandable that FRAG and local residents have raised concerns about the capacity of the highway network to accommodate further development of the scale proposed.

154. I am satisfied that the increased use of Rodley Roundabout would be offset by the improvements either as proposed by the appellants (with or without the Clariant Works development) or as part of the signalisation scheme such that queuing and safety associated with the roundabout and its approaches would not worsen [*IR52 and 53*]. As a consequence there would be no increase in the use of Canal and Bridge Roads as rat-runs or exacerbation of backing-up on Bagley Lane.

155. Impacts on Dawson's Corner, Old Road/Bradford Road and other junctions would be modest and the residual cumulative impacts would not be severe, the test required by Paragraph 32 of the Framework. Pedestrian flows arising from the appeal site would not justify improvements to the zebra crossing near the Old Road/Bradford Road junction [*IR51*].

156. The narrowing of Calverley Lane near the recreation ground would still allow vehicles to park on street within a carriageway width not below that recommended by MfS [*IR54*]. The extension of the 30mph speed limit and footway improvements would ensure that Calverley Lane operated safely with the development. The railings where the footpath link from the Kirklees Estate meets the road would be replaced on the new kerb-line. The improvements to the junction of Calverley Lane with the ring road would improve its function and safety. Crossing the ring road towards Calverley would remain difficult for pedestrians but would not be a reason to resist the development. Provision of a footbridge has not been justified. The cycleway-footway on the ring road

[67] TE1

Richborough Estates

highway verge could incorporate safety measures and would be a commonplace type of scheme.

157. The additional traffic using Town Street would not be significant enough to impact on its function as a local centre, including its safe use by pedestrians. There is insufficient justification for the developer to provide an additional pedestrian crossing.

158. Poplar Farm, as an access, would provide carriageway widths of 5.5m which meet MfS guidelines and advice within the Street Design Guide SPD for Type 1 Connector Streets serving up to 300 dwellings. Parked cars within the estate would assist in reducing traffic speeds so that pedestrian safety would be maintained. Given the access from Calverley Lane to the southbound carriageway of the ring road in the direction of Pudsey, Leeds and Bradford, Poplar Farm would operate as the secondary access, as intended, so would, in practice, serve fewer than 300 dwellings.

159. Providing proposed traffic calming meets agreed standards it would benefit highway safety.

160. The proposal to provide SUDS so that run-off would be at greenfield rates provides sufficient comfort such that localised flooding that has occurred would not be exacerbated by the development. The detailed design of the drainage system, which could be conditioned, would take into account the infiltration capacity of the soils, rainfall levels and climate change. Whilst noting the local concerns about the capacity of off-site sewers, there is no evidence before me that they would be unable to take foul water flows from the development [*IR58*].

161. In conclusion, the impact on highways and drainage infrastructure would be acceptable, subject to the measures proposed as part of the development, and there would be compliance with Policies GP5 and T2 of the LUDPR in these respects. In arriving at this conclusion, I note that the Highways Authority and Statutory Drainage Consultees have not objected subject to the aforementioned measures being incorporated.

Green Belt Purposes, Local Character and Identity

162. The Inspector who considered the original LUDP pointed to some local characteristics of the site but concluded that it should be excluded from the Green Belt. The Inspector into the LUDPR pointed to the Green Belt attributes of the site of checking sprawl, preventing coalescence and safeguarding the countryside from encroachment [*IR107*] but recommended that it be retained as PAS land until such time as a comprehensive review of all PAS sites was undertaken.

163. Green Belt boundaries will be reviewed as part of the SAP. The open nature of the appeal site has a visual connection with the Green Belt land to the west of the by-pass when seen in longer views from the northern slopes of the Aire Valley. However, even from this direction and certainly from closer up, the ring road provides a clear physical boundary. In the context of the Green Belt as a whole, the Leeds/Bradford gap and development needs for the city, it would seem unlikely that the site would be restored to the Green Belt as part of the SAP review.

Richborough Estates

164. That said the local characteristics of the site are of merit. The site maintains a physical separation between the distinct communities of Farsley and Rodley [*IR107 and 114*]. Although development along Bagley Lane has led to the conjoining of the built-up area to the east, the overall perception is still of two separate settlements. The Masterplan shows a central tract of open space following the line of the pylons [*IR14*], but this would not be perceived in near or distance views as separating the settlements.

165. The appellants' underplay the contribution that the green and open characteristics of the site make to public views from Calverley Lane, the recreation ground, Public Footpath No 18 and other surrounding public land. These are locally important, particularly as they are on Farsley residents' doorstep, the site appearing to be unique in that respect [*IR108*].

166. The recreation ground is at the northern extremity of the Farsley Conservation Area and the views across open fields and the Aire Valley provide a contrast to the linear urban heart of the settlement. The development of the fields would adversely affect the setting of the Conservation Area. The existing trees, proposed new planting and relative levels [*IR60*] would not mitigate the significant change in character that would occur, the greenery merely providing a foreground to urban development. In longer distance views from the cemetery and St Margaret's Church in Horsforth, the site's contribution to the balance in the Aire Valley between development and greenspace would be lost.

167. I conclude that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value.

Conclusions on Spatial Strategy

168. I have considered the conflict with Policy N34 of the LUDPR, the only development plan policy that applies specifically to the site, against the need, recognised in the emerging CS and SAP and reinforced by the interim policy, that greenfield sites, including PAS land, will need to be brought forward for housing development. The site lies adjacent to the MUA. The proposal is acceptable in terms of education and health provision and highway, and drainage infrastructure. The development would be relatively sustainable.

169. However, I find adverse impacts of the development on local character and identity of the area and concerns as to whether the distinctiveness of the affected neighbourhoods would be reinforced or enhanced as required by emerging CS Policies SP1 and SP6. The development is not fully compliant with the PAS Interim Policy. That said in other respects the development would fit with the spatial strategy for Leeds. The specific harm that I have found in relation to one of the criteria that will guide the location of development in the context of the Spatial Strategy for Leeds needs to be balanced against other considerations which I will come onto in my overall conclusions.

Richborough Estates

Five Year Housing Land Supply

Requirement

170. As indicated above [*IR137*], the emerging CS housing requirement is the most appropriate to be used in the period up to 2028. However, there are three main areas at issue between the appellants and the Council in calculating the five year housing supply requirement – the "step-up", the backlog and whether the buffer should be 5% or 20% [*IR67*]. I will deal with these in turn.

(i) Step-Up

171. The "step-up" approach within the CS indicates that a smaller number of dwellings per annum need to be provided up to 2016/17 [*IR21*] based on household formation and need evidence [*IR68*]. This approach has been subject to objections during the CS examination. In considering the evidence before the inquiry, I accept that some account should be taken of recessionary factors. The Council has undertaken a thorough analysis of the different scenarios. However, the Council's approach needs to be balanced against the requirement within the Framework to boost significantly the supply of housing and in the context of the Leeds Growth Strategy [*IR39*]. Moreover, the ONS 2011 Household Projections and the REM figures suggest a requirement above the CS early years 3660 dwellings per annum [*IR40*].

172. I have had regard to the range of scenarios debated at both the examination into the CS and this appeal inquiry and indeed considered by the Edge Analytics Reports. In the current circumstances and pending the receipt of the Inspector's report into the CS examination, applying the CS average requirement of 4375 units per annum rather than the "step-up" is the approach that should be followed. This is consistent with the approach taken by the Inspector in the recent Horsforth appeal. It also reflects the fact that the period when headship rates would remain constant is coming to an end [*IR40*]. This leads to a five year requirement of 21875 dwellings. This would be marginally above the requirement based on the revoked RSS figures [*IR37*].

(ii) Back Log

173. The SHMA indicates that pre-CS there was no backlog as the suppressed demand was taken into account in the assessment of future need [*IR71*]. However, the evidence at the inquiry, that since the start of the CS period, there has been a shortfall in provision against the requirement, was not disputed. For example in 2012/13 there was a shortfall in provision of some 2000 units. Indications are that in 2013/14 there will be further undersupply of about 1200 units [*IR38*]. Whilst I accept that it is reasonable for the Council to undertake a full review of the five year requirement position as part of its new SHLAA, I need to consider the evidence before me at this inquiry in terms of the five year position.

174. On the basis of the Framework's requirements, including the application of the buffer, and the emerging national guidance in the NPPG, the under-supply should normally be dealt with in the next five years rather than over the whole plan period. The Sedgefield approach rather than the Liverpool approach is adopted in most of the appeal decisions put before me on the subject [*IR39*]. I see no convincing case for the backlog of over 3000 units being spread over

Richborough Estates

the whole plan period and to do so would mean that some of the current need would not be met until towards the end of the Plan period (2028).

(iii) Buffer

175. Until 2008/09 Leeds was exceeding its housing land supply targets [*IR72*]. The recession then took hold which had a particularly severe effect on supply in Leeds, where much of the land was brownfield and on city centre sites, including flat developments. At the same time RSS targets stepped-up but based on unrealistic population forecasts. As a result Leeds has not met its housing targets in the intervening period. In response LCC has released allocated greenfield sites and undertaken other interventions to maintain the stock of permissions but completions have not increased [*IR73 and 74*]. Most recently it has introduced the interim policy for PAS sites but its effect has not been seen as yet [*IR75*].

176. On the basis that recessionary factors have largely been outside the control of the Council and steps have been taken, a record of persistent under delivery of housing has not been proven, so a buffer of 5%, not 20%, should be added to the five year requirement.

Conclusions on requirement

177. Adding the 3000 backlog and the 5% buffer to the CS average requirement leads to a five year requirement of just under 26000 dwellings. Even if the Liverpool approach to dealing with the backlog was applied there would still a five year requirement of some 24000 dwellings.

Supply

178. There are a number of factors set out by the appellant which have an effect on the actual five housing supply in place at the time of the inquiry [*IR43 and 44*]. Of these the most significant, in terms of housing numbers, and the least contentious are those sites that are not likely to come forward which are shown in the five year supply [*IR80*] and the sites that are shown as Red or Amber within the SAP so could not be said to be available, suitable, achievable or viable. However, in the interests of balance, there are some Green SAP sites which could be added to the five year supply.

179. In addition there is the high supply figure for 2016/17 within the AMR. Information on the suggested smaller contribution from windfalls and lower demolitions is more uncertain. However, even without the adjustments for the 2016/17 figure and the less than predicted contributions from windfalls and demolitions, the Council itself calculates that the current five year supply would be some 19760 dwellings [*IR84*]. This would be below the Council's stated requirement of 20307 homes based on the "step-up" approach and less than a four year supply set against my conclusions on the requirement [*IR177*].

Conclusions on housing land supply

180. As acknowledged above in relation to the requirement, it is not practical for the Council to undertake a comprehensive review of the housing land supply position for every appeal involving housing development. Nonetheless, appellants are entitled to undertake an analysis to support their own proposals, particularly as the base date for evidence from which the five year supply was

Richborough Estates

derived was September 2012 [*IR45*]. In this case the evidence indicates that a five year housing supply cannot be demonstrated.

Other Considerations

181. The development would lead to the loss of some small parcels of Grade 3a agricultural land and a larger area of Grade 3b agricultural land. There is no objection to the proposal from the farmer who leases the land for grazing [*IR59*]. There would no significant loss of the best and most versatile agricultural land.

182. There is no evidence that the development would lead to increased crime and disorder or put additional burdens on the police. The detailed layout could be carefully planned to avoid areas lacking natural surveillance.

183. There would inevitably be disruption to local residents during the construction phases of a development of this nature but the use of a method statement would reduce the temporary impacts. The detailed layout and lighting scheme could be designed such that the living conditions of neighbouring residents would not be unacceptably affected, albeit that the urbanising of the site would change their outlook.

184. The site is used by some wildlife which is appreciated by locals [*IR118*] but there is no evidence that it contains particularly sensitive habitats or protected species. The information before me indicates that most trees and hedges would be retained [*IR14*]. Conditions could be imposed to ensure that the site is developed carefully and that biodiversity features are incorporated.

185. No objections have been raised by Yorkshire Water in relation to water supply.

186. In relation to the representations made by the owners of the land on the opposite side of Calverley Lane [*IR121*], it would appear that both sites could be accessed independently without prejudicing the development of the other.

Obligations

187. The affordable housing obligations respond to identified needs and are supported by existing and emerging development plan policies and SPG, modified to take into account recent market conditions [*IR122*].

188. The education contributions are also supported by SPG. Given the capacity issues with local schools the contributions are justified. I am satisfied that it is necessary to secure maintenance of on-site open space and provide contributions to off-site parks also in accordance with approved SPG. Contributions to public transport infrastructure and ensuring the implementation of the travel plan measures are also required to encourage for use of modes other than the private car [*IR122*] and would meet the guidance within the relevant SPD. I am satisfied that the level of public transport contribution is what could reasonably be required for the development.

189. The appellants have put forward improvements to Rodley Roundabout and its approaches to mitigate the impact of the development on this junction. The appellants' scheme would not be necessary should the more comprehensive signalisation scheme go ahead. However, a contribution to the signalisation

Richborough Estates

scheme would be reasonable as an alternative which is allowed for by the agreement [*IR122*].

190. The obligations within the S106 agreement are 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. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 3.2.2 of the agreement are satisfied and that the obligations should become effective, in the event that planning permission is granted.

191. The proposal, as submitted to the Council, did not include a primary school. The UU makes provision for a school site. I am satisfied that there is a need for a primary school in the area, taking into account existing capacity issues and the proposed development of the appeal site and other sites. This is the only site which has been put forward. Without school provision the proposal would have been unacceptable on the grounds of failure to make appropriate provision for education infrastructure in the area [*IR123*].

192. The obligation is 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. It meets the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 3.2. of the undertaking are satisfied and that the obligation should become effective, in the event that planning permission is granted.

193. I do not regard the Council's suggestion that there should be a commitment to building dwellings within the current five year supply period [*IR125*] as necessary to make the development acceptable in planning terms, notwithstanding the appellants case that the site is needed to meet land supply requirements. The site would be attractive to a developer. I see no reason why it would not be brought forward in a reasonable timescale. However, detailed approvals would need to be sought, there would be on-site and off-site infrastructure requirements and market conditions can change significantly over time. These factors make such a requirement overly prescriptive and unreasonable. There is no need for such an agreement or undertaking.

Richborough Estates

Conditions

194. *IR128-131* deal with the conditions put forward and discussed at the inquiry. I consider that the conditions dealing with reserved matters; phasing; highway works; a construction method statement; drainage and flood risk; contamination and ground conditions; and biodiversity are necessary for the reasons given in the above paragraphs and elsewhere in the report [*IR160, 161, 183 and 184*], should planning permission be granted.

195. With regard to the terms of conditions where there was an element of disagreement between the main parties, I consider that a requirement that reserved matters for the school be submitted within eight years is reasonable having regard to the terms of the UU [*IR123*].

196. I have framed the condition relating to sustainability measures so it is less prescriptive than that suggested by the Council, given the discretionary

guidance within the relevant SPD. I note that emerging policies of the CS such as EN2 have a clear target related to the Code for Sustainable Homes. However, I have not been made aware of whether there are objections to these policies so there is uncertainty as to their final form.

197. There would be ample scope within the development to provide an attractive footpath link as an alternative to the narrow Public Footpath No 18 and such provision should be covered by a condition. There is some uncertainty over the Kirklees Estate link, but there would be a reasonable prospect of it being improved through agreement between the developer and other parties, including LCC. A condition to require improvements would be necessary to enhance the link referred to in the Master Plan and encourage access to Farsley Centre on foot. These conditions would meet the tests in Circular 11/95.

Overall Conclusions

198. The proposal is contrary to the provisions of the development plan Policy N34 which is the starting point. There are adverse impacts on local character and identity. The development is not fully compliant with the PAS Interim Policy.

199. Balanced against these impacts, there are other material considerations. There is not a five year supply of housing land. The site would make a significant contribution to housing provision in Leeds and the area, including affordable homes. Education provision has now been catered for on the site. There are no technical constraints to development of the site subject to the improvements to highways infrastructure and the drainage works that would accompany the development. There are no other overriding objections to the development. Other than the impact on the character of the area, the proposal would perform the economic, social and environmental roles of sustainable development promoted by the Framework.

200. As a five year supply of deliverable housing sites has not been demonstrated relevant policies for the supply of housing should not be considered up-to-date. Policy N34 relates to areas of land safeguarded for long-term development, including housing and Policy H3 deals with the delivery of housing. Both should be considered as policies relevant to the supply of housing and are, therefore, out of date. Paragraph 14 of the Framework indicates that where relevant development plan policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. There are no specific policies in the Framework that indicate that development should be restricted[68].

201. The conflict with Policy N34, taking into account its out-of-date status, and the adverse impacts on local character and identity do not, in themselves, significantly and demonstrably outweigh the benefits. In this regard I have considered the harm to the setting of the designated heritage asset, Farsley Conservation Area. However, the harm would be less than substantial. The PAS Interim Policy has been subject to legal challenge [*IR30*] and is of limited weight. The inconclusive position of housing land development opportunities needs to be seen in the context of the lack of a five year supply in the Council

[68] Footnote 9 of the Framework

Richborough Estates

area as a whole, the national policy test. The requirement for significant planning benefits goes beyond Framework advice of making otherwise unacceptable development, acceptable.

202. In terms of prematurity, there is a reasonable fit with the emerging spatial strategy for Leeds in the CS in that the site is adjacent to the MUA. The SAP is not at a stage where much weight can be attached to it as an emerging DPD under the terms of Paragraph 216 of the Framework, in that no draft has been published containing firm proposals. Nevertheless, the Issues and Options SAP, in coding the site as Amber, indicated that the site has potential for development. Indeed evidence would suggest that a significant proportion of PAS sites will be needed to meet the housing needs identified in the CS [*IR27*]. Moreover the interim policy is an acknowledgement by the Council that PAS land needs to be released in advance of the SAP. Although a large development, it would not be at odds with emerging CS strategy and would not be so substantial or have a cumulative effect such that it would prejudice the SAP. It has not been demonstrated that the grant of planning permission would prejudice the outcome of the DPD process as required by The Planning System: General Principles.

203. Given the size of the site, its suitability is being considered as part of the emerging development plan, as intended by Policy N34 and Paragraph 85 of the Framework. Granting planning permission for a sizeable development would be perceived by many as undermining the genuinely plan-led system promoted by the Framework. In this respect the emerging CS and SAP has already empowered local people to become involved. Consideration of the site as part of the SAP process would allow the relative merits of this and other sites (the Green and Amber sites) to be considered in providing development opportunities to meet the needs of Leeds and the particular communities in this part of the city.

204. However, the plan-led system has to be considered in the context of national policy as a whole, including the obligation to keep plans up-to-date. Moreover, the site has been safeguarded for many years to meet long-term development needs, fits reasonably well with the Spatial Strategy and has no technical constraints to development. Development of the site would boost the supply of housing. Permission in this case would not set an undesirable precedent as other greenfield sites can continue to be assessed on their merits having regard to their status, the particular impacts of the proposed development and the other considerations, such as land supply, applicable at that time. I conclude that the adverse impacts would not significantly and demonstrably outweigh the benefits of the development.

Richborough Estates

Recommendation

205. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Appendix D.

Mark Dakeyne

INSPECTOR

APPENDIX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Nathalie Lieven	Of Queens Counsel, instructed by the Council's Solicitor
She called	
Martin Elliot MA (Hons) MA MRTPI	Team Leader
Janet Howrie BA (Hons) MTP MRTPI	Principal Planner
Mathias Franklin MPLAN	Principal Planner

FOR THE APPELLANTS:

Richard Sagar	Solicitor, instructed by ID Planning Limited
He called	
Jonathan Dunbavin BSc MCD MRTPI	Director, ID Planning Limited
Philip Owen BEng (Hons) CEng MICE MIHT	Director, Optima Highways and Transportation
Dick Longdin BSc (Hons) MA FLI	Partner, Randall Thorp LLP
Tim Morley BEng (Hons) CEng MICE	Director Egorum

FOR THE RULE 6 PARTY, FARSLEY RESIDENTS ACTION GROUP (FRAG):

Martin Joslin	
Phillipa Simpson BSc (Hons) Dip TRP MRTPI (rtd)	
David Cotton BA PHD	
Caroline Gibson	
Andrew Carter	Ward Councillor, Calverley and Farsley Ward

INTERESTED PERSONS:

Mrs Payne	Sandgate Residents Action Group
Chris Levi	Local Resident
Malcolm Levi	Local Resident
Susan Pickles	Local Resident
Ian Bentley	Local Resident
Don Harris	Local Resident
David Badger	Local Resident
Damien Persich	Local Resident
Sophie Lemm	Local Resident
David Williams	Local Resident
Paul Hogarth	Local Resident
John Threlfall	Local Resident

Richborough Estates

Keith Parish	Local Resident
Patricia Jackson	Local Resident
Louise Daddy	Local Resident
Teresa Cotton	Local Resident
Keith Lambert	Local Resident
Christine Agar	Local Resident
Nancy Wilson	Local Resident
Philip Kellett	Local Resident
Ian Rhodes	Local Resident
Gareth Sheperd	Local Resident
Jennifer Allum	Local Resident
Richard Jordan	Local Resident
David Holmes	Local Resident
Christine Beckwith	Local Resident
David Cotton	Local Resident
Jean Stevenson	Local Resident
Jane Hickson	Local Resident
Emma Wallis	Local Resident
Catherine Parker	Local Resident
Susan Lacey	Local Resident
Mr Garrett	Local Resident
Joseph Marjoram	Ward Councillor, Calverley and Farsley Ward
Stuart Andrew	Local MP
Neal Stead	Local Resident
Christine Glover	Local Resident
Kevin Tanner	Local Resident
Lisa Banton	Local Resident

Richborough Estates

APPENDIX B: PLANS AND DOCUMENTS

APPLICATION PLANS AND DOCUMENTS

Plan1 Red Line Boundary Drawing Number 454A.28A
Plan2 Calverley Lane Proposed Site Access Arrangements Drawing No 11040-GA-03
Plan3 Masterplan Layout Drawing No 454A.22B
DOC1 Environmental Statement Volume 1 – Main Text and Figures
DOC2 Environmental Statement Volume 2 – Technical Appendices
DOC3 Environmental Statement Non Technical Summary
DOC4 Planning Analysis Statement
DOC5 Masterplan, Design and Access Statement
DOC6 Utilities Study
DOC7 Statement of Community Consultation
DOC8 Travel Plan
For Transport Assessment refer to CD23 and CD24

CORE DOCUMENTS

CD1 DCLG – National Planning Policy Framework (March 2012)
CD2 HM Government – Laying the Foundations: A Housing Strategy for England (November 2011)
CD3 ODPM – The Planning System: General Principles (January 2005)
CD4 LUDPR - Relevant Saved Policies and Proposals Maps Extracts (2006)
CD5 LCC – Local Development Framework Core Strategy Submission Draft (April 2013)
CD6 LCC CS Housing Background Paper (April 2013)
CD7 LCC – SAP - Issues and Options for the Plan Document Extracts (June 2013)
CD8 LCC SHMA Update (May 2011)
CD9 LCC Demographic Evidence Update (September 2013) – Edge Analytics
CD10 NLP – Leeds Local Plan Assessment of Housing Requirement to Inform Examination (September 2013)
CD11 LCC – Leeds Local Plan Summarising Demographic Evidence – issued at the 9 October 2013 CS Housing Hearing
CD12 LDF AMR 2011-12 (March 2013)
CD13 An Assessment of the Leeds District 5 Year Housing Land Supply 2013-2018 by the Leeds Planning Consultant and House Builder Consortium – Final Report 9 September 2013
CD14 Nick Boles Planning Minister – Speech: Housing the Next Generation (10 January 2013)
CD15 NLP – Handle with care: The new 2011-based Interim Household Projections (10 April 2013)
CD16 LGA/Planning Advisory Service – Ten Key Principles for Owning Your Housing Numbers – Finding your Objectively Assessed Need (April 2013)
CD17 Draft National Planning Practice Guidance – Assessment of Housing and Economic Development Needs and Assessment of Land Availability (2013)
CD18 LCC Executive Board Report – Housing Delivery (13 March 2013)

Richborough Estates

CD19 LCC Executive Board Report - Housing Investment Land – A Strategic Approach to Delivery (17 July 2013)
CD20 LCC Report to Scrutiny Board (Housing and Regeneration) - Council Approach in Dealing with Offsite Affordable Housing Contributions (24 September 2013)
CD21 Martin Elliott LCC Rebuttal Proof to the Land at Outwood Lane, Horsforth Inquiry (see APP4)
CD22 LCC Report to City Plans Panel – Pre-Application Presentation on Spofforth Hill PAS Site and Associated Minutes (11 April 2013)
CD23 Optima Transport Assessment for appeal site dated September 2012
CD24 Optima Transport Assessment Addendum dated April 2013
CD25 Manual for Streets – DoT (2007)
CD26 LCC - Public Transport SPD Planning Document (August 2008)
CD27 Guidelines for Planning for Public Transport in Developments – IHT (March 1999)
CD28 Guidelines for Providing for Journeys on Foot – IHT (2000)
CD29 Leeds Street Design Guide SPD (August 2009)
CD30 Appeal Decision Ref: APP/N4720/A/09/2111698 – Land at Kirklees Knowl, Bagley Lane, Farsley (8 March 2010)
CD31 Statement of Common Ground relating to CD30 (December 2009)
CD32 Guidance on Transport Assessment – DoT (March 2007)
CD33 LCC SPG4 – Greenspace Relating to New Housing Development (July 1998)
CD34 LCC Neighbourhoods for Living SPG (December 2003)
CD35 LCC SPG3 – Affordable Housing (February 2003)
CD36 Farsley Village Design Statement (August 2010)
CD37 LCC Travel Plans SPD (September 2012)
CD38 LCC SPG11 – Section 106 Contributions for School Provision (February 2001)
CD39 LCC Pudsey Local Plan (1995) – Extract from Proposals Plan
CD40 LUDP – Extract from Inspector's Report (1999)
CD41 LUDPR – Extract from Inspector's Report (2006)
CD42 LCC Development Plan Panel Report – SHLAA 2012 Update
CD43 Letter from Barratt Homes re: SHLAA 2012 Update dated 19 August 2013
CD44 LCC Response to CD43 dated 12 September 2013
CD45 LCC Housing Land Monitor 31 March 2013

Richborough Estates

OTHER DOCUMENTS SUBMITTED BEFORE THE INQUIRY

GENERAL DOCUMENTS

GEN1 Questionnaire
GEN2 Notification about receipt of appeal (4 July 2013)
GEN3 Letters of representation in response to appeal notification
GEN4 Notification of inquiry arrangements (11 November 2013)

STATEMENTS OF COMMON GROUND

SOCG1 – Statement of Common Ground agreed by appellants and LCC relating to non-highway/transport matters

SOCG2 – Statement of Common Ground agreed by appellants and LCC relating to highway/transport matters including Appendices A to T

LPA DOCUMENTS

LPA1 Statement of Case
LPA2 Proof of Evidence of Martin Elliot
LPA3 Proof of Evidence of Janet Howrie
LPA4 Proof of Evidence of Mathias Franklin and Appendix
LPA5 Rebuttal Proof of Evidence of Martin Elliot and Appendices 1 to 7
LPA6 Rebuttal Proof of Evidence of Janet Howrie

APPELLANTS' DOCUMENTS

APP1 Statement of Case
APP2 Proof of Evidence of Jonathan Dunbavin and Appendices ID1 to ID41
APP3 Proof of Evidence of Philip Owen and Appendices A to Z
APP4 Rebuttal Proof of Evidence of Philip Owen
APP5 Appeal Decision Ref: APP/N4720/A/13/2192208 – Land at Outwood Lane, Horsforth, Leeds (13 November 2013)
APP6 SoS Appeal Decision Ref: APP/B3410/A/13/2197299 – Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent (12 November 2013)
APP7 Statement on Drainage Strategy and SUDS by Tim Morley (11 November 2013)

FRAG DOCUMENTS

R6.1 Statement of Case
R6.2 Bundle of Proofs and Supporting Evidence
R6.3 Rebuttal Proofs including Appendices A to D
R6.4 Comments on Optima letter to LCC dated 17 October 2013
R6.5 Statement on Travel Plan

DOCUMENTS SUBMITTED AT THE INQUIRY

GENERAL DOCUMENT

ATT1 Attendance Lists for Days 1 to 6

LPA DOCUMENTS

LCC1 Current status of PAS sites (4 tables)
LCC2 List of sites sieved out of 5 year supply but Green in Site Allocations DPD
LCC3 Residential Eye – UK Residential Forecasts November 2013 – Helping Hands – Jones Lang LaSalle
LCC4 LUDPR 2006 – Proposals Map and Inset Maps
LCC5 LUDPR – Inspector's Report – Chapter 5 – pages 8-28
LCC6 LCC CS Settlement Hierarchy Map 3
LCC7 Draft Conditions
LCC8 Statement on CIL Regulation 122 compliance

Richborough Estates

LCC9 Closing submissions

APPELLANTS' DOCUMENTS

TE1 Letter from LCC re primary school provision (12 September 2013)
TE2 Report to LCC Joint Plans Panel - CS Examination Update (14 November 2013)
TE3 Parking Surveys on Calverley Lane outside recreation ground (9/10 November and 16/17 November 2013)
TE4 Strategic Environmental Assessment of the Revocation of the RS (January 2013)
TE5 Extract from Hansard (24 October 2013)
TE6 E-mail from Yorkshire Water relating to foul drainage (21 November 2013)
TE7 Summary of S106 agreement between appellants and LCC
TE8 Statement on CIL Regulation 122 compliance on UU
TE9 Appearances List
TE10 Opening Submissions
TE11 S106 agreement between LCC and the appellants (27 November 2013)
TE12 Unilateral Undertaking under S106 given by the appellants (27 November 2013)
TE13 Closing Submissions
TE14 Notes on the procedures contained in Parts II and III of the Land Compensation Act 1961

FRAG DOCUMENTS

FRAG1 Report to LCC Scrutiny Board re SHLAA 2012 (30 October 2013)
FRAG2 Local Pinch Point Fund Application Rodley Roundabout Signalisation
FRAG3 Extract from Hansard (25 November 2013)
FRAG4 Extract from DMRB
FRAG5 Rebuttal on walking times contained in Philip Owen's Rebuttal
FRAG6 Opening Statement with addendum
FRAG7 Closing submissions

LOCAL RESIDENTS' DOCUMENTS

LR1 Tom Tom European Congestion Index (David Cotton)
LR2 Statement from Mrs Payne, Sandgate Residents Action Group
LR3 Photograph of parking outside recreation ground (Chris Levi)
LR4 Photographs of development on Coal Hill Lane, Farsley and vacant land in Stanningley (Catherine Parker)

Richborough Estates

APPENDIX C: Abbreviations

AMR	Leeds Local Development Framework Annual Monitoring Report
CIL	Community Infrastructure Levy
CS	Core Strategy
DCLG	Department of Communities and Local Government
DMRB	Design Manual for Roads and Bridges February 1999
DoT	Department of Transport
DPD	Development Plan Document
HMCA	Housing Market Characteristic Area
IHT	Institution of Highways and Transportation
LGA	Local Government Association
LCC	Leeds City Council
LDF	Local Development Framework
LPA	Local Planning Authority
LUDP	Leeds Unitary Development Plan 2001
LUDPR	Leeds Unitary Development Plan Review 2006
MfS	Manual for Streets
MUA	Main Urban Area
NLP	Nathaniel Lichfield and Partners
NPPG	National Planning Practice Guidance
ODPM	Office of the Deputy Prime Minister
ONS	Office of National Statistics
PAS	Protected Areas of Search
REM	Regional Economic Model
RSS	The Yorkshire and Humber Plan - Regional Spatial Strategy to 2026

Richborough Estates

SAP	Site Allocations Plan
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State
SOCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SUDS	Sustainable Urban Drainage System
S106	Section 106 of the Town and Country Planning Act 1990
TRICS	Trip Rate Information Computer System
UU	Unilateral undertaking under S106

Richborough Estates

APPENDIX D: Recommended Conditions

Reserved Matters

1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters for the site or any phase (excluding the land to be reserved for the two form entry primary school) shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) Application for the approval of reserved matters for the land reserved for the two form entry primary school shall be made to the local planning authority before the expiration of eight years from the date of this permission.

Phasing

5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.

Highways

6) Notwithstanding the submitted plans, further details of the following and a timetable of implementation of the highway works shall be submitted to, and approved in writing by, the local planning authority prior to commencement of development:
(i) Proposed Calverley Lane site access arrangements and footway link towards Farsley (Drawing No: 11040-GA-03/Rev B)
(ii) Proposed Calverley Lane/Ring Road Improvement Scheme (Drawing No: 11040-GA-05/Rev B)
(iii) Proposed Ring Road A6120 Footway/Cycleway Improvement Scheme (Drawing No: 11040/SK/04/Rev A)
(iv) Proposed Bagley Lane Traffic Calming Improvement Scheme (Drawing No: 11040/SK/05/Rev A)
(v) A cycleway link through the appeal site
(vi) A footway through the landscaped area towards the southern boundary of the site linking Calverley Lane with the Poplar Farm Estate
(vii) Improvements to the footpath link onto Kirklees Close
The works shall then be implemented in accordance with the approved details and timetable.

Construction

7) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority.

Richborough Estates

The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) details of access, including routing of construction traffic

ii) hours of construction and construction deliveries

iii) the parking of vehicles of site operatives and visitors

iv) loading and unloading of plant and materials

v) storage of plant and materials used in constructing the development

vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

vii) wheel washing facilities

viii) measures to control the emission of dust and dirt during construction

ix) a detailed method statement for the protection of all watercourses on or adjacent to the site from any physical or chemical disturbance or pollution during all site operations

x) a scheme for recycling/disposing of waste resulting from construction works.

Protection of Vegetation

8) No works, including ground preparation, shall commence on the site until all existing trees, hedges, bushes shown to be retained on Drawing No: 11040-GA-03/Rev B are fully safeguarded by protective fencing and ground protection in accordance with the specifications and the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction". Such measures shall be retained for the duration of the construction works.

Drainage and Flood Risk

9) No development shall take place until a scheme for the disposal of surface water and foul drainage has been submitted to, and approved in writing by, the local planning authority. The details shall incorporate the following:
(i) the use of a Sustainable Urban Drainage System for the surface water as set out in the Drainage Strategy Report dated February 2012;
(ii) a programme for the implementation of the works relative to the water catchments and the phasing of the development;
(ii) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to the equivalent of greenfield run-off and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
(iii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
The scheme shall be carried out in accordance with the approved details and programme.

10) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (FRA) dated February 2012 and the following mitigation measures detailed within the FRA:

i) There shall be no built development in the area identified as at risk of flooding in the 1 in 1000 year flood event on Red Beck (Figure 3 of the Hydraulic Modelling Technical Note dated 19 January 2012);

Richborough Estates

ii) There shall be no built development within 8 metres of Red Beck;
iii) The alignment and condition of the ordinary watercourse referred to in paragraph 2.4.2 of the FRA shall be fully investigated and the easement requirement submitted to, and approved in writing by, the local planning authority prior to commencement of development on site;
iv) Finished floor levels of the proposed dwellings shall be set no lower than 300mm above the surrounding ground levels.

Contamination and Ground Conditions

11) Development shall not commence until intrusive ground investigations have been carried out and a report of the investigations has been submitted to, and approved in writing by, the local planning authority. Where remediation measures are shown to be necessary in the report and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.

11) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.

12) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the local planning authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority.

13) Prior to the commencement of development, intrusive site investigations, in accordance with the recommendations within Paragraph 102 of Chapter 12 of the Environmental Statement, shall be undertaken and written details of the investigations submitted for the written approval of the local planning authority. In the event that the site investigations confirm the need for remedial works to treat any areas of shallow mine workings to ensure the safety and stability of the proposed development, these works shall be undertaken prior to commencement of development.

Sustainability

14) Prior to commencement of development, a Sustainability Statement shall be submitted to, and approved in writing by the local planning authority, including measures to be incorporated into the development reflecting the guidance within the Council's "Building for Tomorrow Today Sustainable Design and Construction SPD". The measures shall be carried out as approved.

Richborough Estates

Biodiversity

15) Prior to the commencement of development a Bat Mitigation Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority to implement the recommendations of the "Tree inspection and bat activity survey" report dated October 2011. The plan shall be implemented in accordance with the approved details and timetable.

16) Prior to the commencement of development a Biodiversity Protection and Enhancement Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include details of the protection of tree and hedgerow habitats together with any wildflower seeding of proposed SUDS areas, enhancements along the beck, and planting across the site to benefit wildlife. The Plan shall include objectives to benefit biodiversity and a maintenance schedule of how the features will be managed on an annual basis, together with details of who shall carry out the maintenance. The Plan shall thereafter be implemented in accordance with the approved details and timetable.

17) Prior to the commencement of development, details of bat roosting and bird nesting opportunities (for species such as house sparrow, starling, swift, swallow and house martin) to be provided within buildings and elsewhere on-site shall be submitted to, and approved in writing by the local planning authority. The details shall show the number and specification of the bird nesting and bat roosting features and where they shall be located and a timetable for implementation. The details shall be carried out in accordance with the approved details and timetable.

18) No site clearance or removal of any trees, shrubs or other vegetation shall be carried out during the period 1 March to 31 August in any year.

19) Prior to the commencement of development a Method Statement for the control and eradication of Japanese Knotweed and Himalayan Balsam shall be submitted to, and approved in writing by, the local planning authority. The Method Statement shall thereafter be implemented as approved.

Richborough Estates

The Planning Inspectorate

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

by Mark Dakeyne BA (Hons) MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 27 January 2015

Richborough Estates

Town and Country Planning Act 1990

Leeds City Council

Appeal by

Thornhill Estates

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

Reopened inquiry held on 11, 12, 13 and 14 November 2014

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

File Ref: APP/N4720/A/13/2200640

File Ref: APP/N4720/A/13/2200640
Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Thornhill Estates against Leeds City Council.
- The application Ref 12/04046/OT is dated 21 September 2012.
- The development is proposed residential development.

Summary of Recommendation: That the appeal is dismissed and outline planning permission is refused.

Procedural Matters

1. The original inquiry into this appeal opened on 19 November 2013 and closed on 29 November 2013. Following the inquiry my report and recommendation on the appeal were submitted to the SoS.

2. By letter dated 3 July 2014 the SoS decided to reopen the inquiry as he considered that there remained two issues upon which he was not sufficiently informed to be in a position to determine the appeal. These issues relate to (1) the five year supply of housing; and (2) the impact of the development on bats. The letter stated that the reopened inquiry should not consider other issues.

3. The inquiry reopened on 11 November 2014 and closed on 14 November 2014, sitting for an additional four days. Closing statements from LCC and the appellants were submitted in writing a few days after the close of the inquiry as substantial evidence was heard about the five year supply of housing on the final day of the inquiry. This supplementary report deals solely with the matters raised in relation to the reopened inquiry and should be read alongside my original report[1].

4. A SOCG[2] dated 14 October 2014 was agreed between LCC and the appellant on ecology. The SOCG concludes that the bat surveys undertaken are sufficient for planning permission to be granted for the proposal and there are no ecological grounds to warrant a refusal of planning permission.

5. A variation[3] to the S106 agreement put forward at the original inquiry [*OR6, 122, & 187-190*] has been submitted so as to make provision for CIL in the event that a CIL charging schedule is adopted and is in force when development commences.

6. This supplementary report provides updates on the environmental information submitted and relevant planning policies and sets out the cases of the parties and my conclusions and recommendations. Lists of appearances, inquiry documents, abbreviations and recommended conditions for the reopened inquiry are appended.

Richborough Estates

[1] Paragraphs in the original report referred to in this supplementary report will be prefixed by *OR* followed by the original paragraph number e.g. [*OR96*]
[2] Document SOCG3
[3] Document TE21

Update on Environmental Information

7. The bat surveys conducted between May and October 2012 and subject to a survey report in March 2013 were not put before the original inquiry, although referenced in the Environmental Statement as having been ongoing in September 2012[4]. Following on from the decision to reopen the inquiry the Council re-advertised the application as a whole by notice dated 31 July 2014 as, amongst other things, an application accompanied by an environmental statement.

8. In considering the Environmental Information I have had regard to the Extended Phase 1 Habitat Survey February 2012 and the Tree Inspection and Bat Activity Survey October 2011 included within the original Environmental Statement [*OR11-12*]. In addition the further surveys of 2012, the bat survey report 2013 and the bat impact assessment report 2014[5] were considered at the reopened inquiry and now comprise part of the Environmental Information.

9. It has also come to light that the trees on the appeal site are subject to an area Tree Preservation Order made in 2011[6]. Consent was granted to remove an oak tree (T12) on the eastern boundary of the site in February 2012[7]. Two trees (T36 and 37) in the south-east corner of the site were removed by Bellway Homes, the developer of the adjacent Poplar Farm estate, in March 2014. It would appear that these trees were shown to be removed on the reserved matters approval for that development[8].

Update on Planning Policies and Guidance

10. The Council approved the CS for adoption on 12 November 2014. This followed its examination in 2013/14 and the publication of the CSIR on 5 September 2014[9]. The Inspector agreed to the 'step up' contained within Spatial Policy 6 [*OR21*] on the basis that this would allow housing growth to be delivered with, as far as possible, the provision of infrastructure necessary to support it.

11. The Council has been considering the representations to the SAP Issues and Options DPD [*OR20*]. Now that the housing requirement and distribution has been set by the CS it was intended to report to the Development Plans Panel of the Council in mid-January 2015 with a list of sites to be included in the Publication Draft version of the SAP to be issued later in 2015. It is anticipated that adoption of the SAP would not be until 2017.

12. The legal challenge to the lawfulness of the interim policy for PAS land [*OR22, 30 & 201*] was not upheld[10]. The judge found that the policy was a lawful 'residual' DPD.

13. The PPG was published in March 2014, after the close of the original inquiry. The PPG replaced a plethora of Circulars and guidance documents, including The

[4] DOC1 Chapter 8 paragraphs 91 and 92
[5] Document TE15
[6] Document LCC18
[7] Document TE17
[8] Document APP11
[9] See ID2 to APP8
[10] R (on the application of Miller Homes) v Leeds City Council [2014] EWHC 82 (Admin)

Richborough Estates

Planning System: General Principles [*OR24-25, OR85, OR202*]. Advice on refusing planning permission on the grounds of prematurity has thus been updated and will be referred to later in this report.

The Case for Thornhill Estates

The material points are[11]*:*

General

14. The appellant relies on the previous closing submissions to the extent that they are not covered or updated by these submissions.

Prematurity

15. The issue of prematurity was covered in detail at the original inquiry. By way of update, the PPG restates the prematurity policy tests and confirms that:

- Prematurity arguments are unlikely to justify refusal other than where it is clear that the adverse impacts would significantly and demonstrably outweigh the benefits;
- Prematurity is likely to be limited to cases where (i) the proposal is so substantial or its effects so significant that to grant permission would undermine plan making on central issues in the emerging Plan and (ii) the Plan is at an advanced stage;
- Prematurity will seldom be justified where a plan has yet to be submitted for examination;
- The burden of proof is on the LPA to demonstrate prejudice to the plan.

16. The SAP is not yet at the first draft stage in terms of defining allocations. The Council's best estimate is that a publication draft will be available in June 2015 with adoption some two years later. The SAP is not at an advanced stage and certainly has not been submitted for examination. The proposals do not have a substantial effect on, or undermine the task of, identifying 70,000 houses through the plan period.

17. Policy N34 of the UDP is no proper basis for refusal as that policy is out of date regardless of the 5 year land supply position. This is evidenced by the Council's own decision to allow development of PAS, provided the terms of 'Interim Policy' are met. PAS were always identified as suitable for development, the only question being when such sites should be developed.

18. The content of the draft SAP will have no material bearing on the position of supply and delivery of houses for several reasons:

- Historically the Council has resisted the development of allocated sites in the UDP on phasing grounds;
- The Council's current attitude towards greenfield development that is neither allocated in the UDP nor in line with its PAS release resolution is negative, as has been well documented throughout the inquiry;

[11] Summarised from the appellants' closing submissions TE22

Richborough Estates

- The draft SAP will not be published until June 2015 and at that point its status will still mean that limited weight could be attached to it;
- The issue of prematurity is a continuum and whilst it does not arise now, as the Plan moves towards submission the issue becomes more, not less of a basis for refusal;
- Lead in times for development from the point of the adoption of the plan can legitimately carry material weight and have to be considered in the context of the five year period. It will be too late to make a difference.

19. There is no emerging Neighbourhood Plan, at any stage of preparation that the prematurity issue could arise in relation to.

20. The 'interim policy' carries no more weight as a result of the High Court decision *[IR12]*. The Judge found that the Interim Policy did not allocate sites; was not a Development Management Policy; and consequently, it was neither a DPD nor an SPD. He found that it was a residual LDD. The Council's case was that this finding would not stop any applicant arguing a case based on the individual merits of an application and the weight to be given to the 'interim policy'.

The Housing Requirement

21. It is common ground that the base requirement for the five year period is 20,380 (3 x 3,660 and 2 x 4,700). It is also clear that this base requirement will automatically increase by the difference between 4,700 and 3,660 (1,040) in April 2015 and each year until April 2017, when the base will be 5 x 4,700 or 23,500.

22. The terms of the CSIR are important to read because it says:

- The base requirement should not be higher than 3,660 for the period to 2017 due to the sustainable growth, environment and infrastructure delivery issues. The CS Inspector did not engage with the issues of undersupply (other than pre 2011) or the appropriate buffer, and did not need to. The five year requirement is greater than the base to reflect these issues. There can be no valid suggestion that this base precludes the proper analysis of these topics in a 5 year land supply assessment, which is quite different from the exercise of setting the base requirement in a plan;
- The issue of undersupply relative to the evidence base date and the census (both of 2011) is dealt with at paragraphs 16 and 17 of the CSIR and it is clear that the base did not include undersupply prior to these dates, but the Inspector was silent on the year 2011 – 2012. Nevertheless, at paragraph 17, is a clear finding that not all housing need pre-2011 had been met;
- The Inspector concluded that there was an immediate need for housing and the 3,660 pa figure up to 2017 should not be used to prevent delivery of more housing if it can be satisfactorily accommodated;
- The Inspector was aware of undersupply against the CS base requirement and encouraged positive steps to be taken to address shortfalls by bringing sites forward and considering alternative strategies to prevent constraining development.

Richborough Estates

23. Whilst the Council takes a general prematurity point, no site specific point on environment, sustainability or infrastructure relative to this development is taken. The 3,660 figure should not be used to prevent development.

The Buffer

24. There was undersupply against the CS base requirement in 2012/2013 and 2013/2014. There is also undersupply in the first half of 2014/2015 and there will be by the end of the year. Completions in the current year are very low, starts are very low, and the single quarter of higher starts in Q4 of 2013/2014 shows a one-off 'spike'. The current year position of completions in Leeds is heading downwards compared to previous years, and in the opposite direction to the general improvement in the national picture.

25. There must have been a requirement to be met in 2011/2012 and it was accepted by the Council that this was not met by some margin. The supply was 1,931, well down on the Core Strategy 3,660. As noted above it was accepted by the CS Inspector and is also common ground that not all the pre-2011 need was met prior to that date as well.

26. On this basis there has been persistent undersupply of at least four years against a newly set base requirement in the CS, as well as acceptance that pre 2011 needs were not all met. This is persistent under supply against the Council's recently approved CS base requirement.

27. Time periods considered in several recent appeals (4, 5 and 6 years) includes recession but also a period of recovery. The appellants submit that a 20% buffer should be applied. In this case there is a recent Council derived requirement figure against which the judgement is made, and in addition we are now further into economic recovery than the date of those appeals.

28. The Council's reply is essentially a plea not to apply 20% rather than an argument as to why the test of persistency has not been met in that green belt land will have to be released now to meet the buffer. However, the Council already has a reservoir of non green belt land which can be released in the form of PAS which was found suitable for development almost 15 years ago. The appeal site is not only PAS but on the edge of the MUA of Leeds as defined in the CS, and is not part of an outlying settlement (such as Wetherby), and as such has sustainability credentials. The suggestion that even if land is released, builders will not build is clearly wrong. Bellway built out next to the appeal site in double-quick time in the heart of the recession. As explained, greenfield sites that developers have been able to get on and start (notwithstanding delays in getting reserved matters approval) are building and selling quickly. Many of these are the sites won on appeal which were allocated in the UDP but held back by the Council on phasing grounds, when exactly the same arguments were run and rejected about the builders not building.

29. The buffer should be added to the base requirement and undersupply, according to the SoS in the Galley Hill[12] and Droitwich Spa[13] appeals. The undersupply is

Richborough Estates

[12] Appeal decision ref: APP/V0728/A/13/2190009 dated 26 September 2013 (See ID3 of APP8)

what should have been provided according to the CS. A buffer (whether 5% or 20%) is always to be applied to the base figure from the start of the new plan, so it follows that by not delivering the base requirement figure, the LPA can not be allowed to wipe out the buffer as well - thereby reducing the requirement it would otherwise have had to meet in the 5 year period - simply because it failed to meet the base annual requirement. This would have the effect of rewarding a failure to deliver with a lower requirement that would have otherwise been expected.

Past Undersupply

30. The minimum past undersupply in this case is 2,342 – for the two full years of the CS period. There was also undersupply in the year 2011 – 2012. The figure measured against 3,660 (the CS base requirement for the first 5 years) is 1,729. This makes the minimum undersupply 4,071. When added to the 20,380, with a 20% buffer this equates to 29,341 as the five year requirement.

31. However, the minimum undersupply contains completions from the re-occupation of long term empty properties and older people's accommodation. In these two years the quantum of 1,184 is in dispute due to the extent of evidence. The evidence needs to be robust and compelling in the case of empties (as they are windfall) and in the case of older people measured against the Council's own criteria of being akin to C3 as self-contained units or freeing up housing stock. The evidence presented to the inquiry meets none of the relevant tests. The requirement increases according to the amount of delivery felt to have been robustly evidenced from these two sources.

Period of Catch Up for Undersupply

32. Several statements of policy and guidance now make this matter clear, in addition to a range of appeal decisions:

- The PPG makes it clear that LPAs are to aim to catch up undersupply in five years where possible. No case is advanced that this would not be possible in Leeds. The PPG goes on to say that where this cannot be done, working with neighbouring authorities should be pursued. Leeds is not attempting to do this;
- The Planning Advisory Service confirms the use of the Sedgefield approach to catching up under delivery in the first five years;
- Several appeals also confirm the same, the conclusions of which are all the more telling in this case because we are dealing with undersupply against the Council's own and recently set requirement figure in a rising market for housing (at least on sites that are deliverable).

33. The Council's argument for a ten year period is similar to not applying the buffer to the undersupply. It has the effect of reducing the requirement below the base figure defined in the CS, as though the prize for under performance is to be let off meeting the CS defined figure for the first five years. This would be the direct opposite to the Framework duty to boost significantly the supply of housing.

[13] Appeal decision ref: APP/H1840/A/13/2199426 dated 2 July 2014 (See Appendix 2 to APP12)

Richborough Estates

Requirement Summary

34. The base five year requirement of 20,380 should have added to it the first five years' undersupply and then a 20% buffer. Without taking any adjustment for empties and older person's accommodation in completions, this equates to 29,341. There is no cogent basis for excluding under supply in 2011/12. By way of comparison, if adjustment is made to exclude completions from empties and older peoples housing on the same approach, the 29,341 becomes 30,685.

35. The urgency of taking steps to address this position, given the failing upturn in delivery in Leeds is amply illustrated by information on completions. Based on a requirement of 3,660 per annum there is a quarterly requirement of 915 units. Completions have only twice (out of 10) exceeded 600, let alone 915 and the current quarter year position is well under 500. Starts have only 3 times (out of 10), exceeded 600 units. Of those three occasions only once was 700 units exceeded in what was a one off quarter that just met (and did not exceed) the required 915 units per quarter required by the new CS.

Housing Supply

36. It is common ground that the burden of proof falls on the Council to demonstrate that there is a 5 year supply. Sites have to be available now, be suitable now and achievable with a realistic prospect of delivery and in particular be viable. Viability is not the only aspect of achievability.

37. The test is one of realism. Build out rates have to be realistic too. It is for LPAs to provide robust up to date evidence of deliverability and show that judgements are clear and transparent.

38. The Council's supply assessment is described as 'optimistic' in relation to sites without permission, the reuse of brownfield land and build out rates. This approach is inconsistent with policy and pervades the Council's entire analysis of supply. It is submitted that this optimism is aligned to an assertion that the Council's CS requirement is also optimistic. In fact, the opposite is true - the Council's requirement is deliberately stepped back below the level of need.

39. A specific example of this optimism is provided by looking at 'red' and 'amber' sites in the Council's 5 year supply. Red sites are those identified in the Allocations Issues and Options paper as not considered suitable for allocation. Amber sites are considered to be sites with 'potential' but with 'issues' to resolve and not in a favoured location [*OR21*].

40. There is no evidence before the inquiry that the Amber 'issues' have been resolved, merely the general suggestion that the Council has looked further at these sites since they were judged Amber. No detail at all is provided. Of those sites on the list most are Amber, but some are Red. They total 1,558 units. The comments show issues of a significant technical nature, not just of a policy nature. None of these sites can be judged suitable now and cannot be included in the five year supply on that basis alone.

41. The Council seeks to portray the position of house builders as binary. They will not build in the city centre and inner areas but will build elsewhere. To understand this properly one has to look at the HBF position which is a matter of correct and realistic balance. The HBF identify a deliverable supply for these areas of over 3,000 units in the next 5 years, in contrast to the optimistic almost

Richborough Estates

10,000 identified by the Council. In terms of delivery of smaller properties, there is no evidence to suggest the terms of the CS Policy H1 are unlikely to be met as a result of a finding that the Council does not have a 5 year supply. The Council's evidence to this inquiry on matters of regeneration is clear. There is no case to stop greenfield development in order to encourage regeneration. But the approach is symptomatic of the Councils persistent resistance to development, a position that may appear to have been moderated since it lost 11 appeals in a row on land supply issues up to 2011, but which remains as the constant underlying theme.

42. Of the sites in the SHLAA, less than half have planning permission. Those sites make up about a third of the total supply claimed by the Council. The SHLAA numbers have also increased since approved by the Council by some 1,800 units. Even at the time of approval, Members of the relevant Panel had concerns regarding realism. The supply starting point only 3 years ago was a finding that the supply was between 9,000 and 11,000 units at the Grimes Dyke appeal.

43. Policy in relation to SHLAA production is clear. Developers, landowners and agents are to play a significant role to make sure the document is robust as set out in the PPG, PAS guidance and the appeal at Elworth Farm[14].

44. The process has involved the relevant parties but the outcome has taken no material account of their comments. After the end of engagement on the SHLAA with builders and landowners, the Council has attempted to backfill the evidential void with reports from the DVS in late May 2014 and October 2014, having recognised the need to attempt to support the position already reached.

45. The position of the HBF is very clearly one of disagreement with the Council over more than half of the claimed SHLAA sites output. This is supported by detailed analysis through the HBF detailed site by site report[15]. This sets out comments on all sites and reasons for conclusions. There has been no response to it from the Council and no attack of it in cross examination. The further analysis of sites over 50 units by Mr Roebuck has not been responded to either. That it takes a more optimistic view of some sites than the HBF, in particular in the city centre, is a robust and healthy check on the HBF position. What this still shows is a massive difference in realistic delivery from that of the Council.

46. Whilst the DVS reports attempt to grapple with viability on a best case approach of minimum profit and minimum land price, there is no cogent evidence before the inquiry on:

- The realism of enough developers in the market place with enough capacity and aptitude for the specialist nature of city centre development, which is a very different proposition to that which existed pre-recession. This is a significant point given that the Council estimate 3,959 units being delivered from the city centre in the next five years. As emerged at the inquiry, the Council's case relies on the fortunes of a new model; the PRS institutional investor which has no track record in Leeds;

Richborough Estates

[14] Appeal decision ref: APP/R0660/A/13/2196044 dated 11 April 2014 (See ID12 of APP8)
[15] See APP9

- The realism of investment and bank funding, its terms, restrictions and availability, on which no evidence was given by the Council at all;
- The realism of enough developers in the market place with enough capacity for inner area development which is acknowledged to be 'challenging' and is the domain of a handful of low cost developers such as Gleeson and Keepmoat with insufficient output potentially even on a regional basis to deliver the Council's 5 year figure from the inner area of 5,816 units.

47. There is also confirmation from the DVS that, in the main, volume builders are reluctant for commercial reasons to be involved with delivery in the inner area and that their business models and view of viability generally preclude development in these low market areas.

48. The Council's case against the HBF position on the SHLAA is on build out rates and viability. The build rate point is however hollow for several reasons:

- The HBF did not apply 20 to 30 units per annum as suggested but 35 to 40;
- Of the sites where build out rates made a difference, there are only 6 and the specific circumstances and basis of judgements are explained on all of these;
- The Council identifies sites in generally strong market areas where supply is short[16]. There were actually few sites granted permission, outside the city centre area, with more than 50 units. The build rates on these suburban sites in areas of low supply are expectedly high. It shows the demand for sites of that nature and the relative lack of supply. However, to apply these build rates to all sites regardless of their market area or circumstances is false. In addition, normal market economics will cause build rates per site to fall if supply in attractive locations is available, even though overall output would increase with more of such sites available. At Kirkstall Forge the Council's committee report agrees with the appellant's position on build rates and at Spofforth Hill evidence comes direct from the builder involved. Realism of analysis depends upon following this information, not rejecting it;
- Build rates are not materially different in Mr Roebuck's analysis of his 84 sites.

49. Consequently, build rates are not a principal reason for the difference between the parties. It is the reality of market delivery of sites in challenging areas with no realistic means of attracting anything like sufficient interest to achieve delivery of, in the case of the city and inner area in particular, 9,775 units (41% of all Council-claimed SHLAA supply).

50. The evidence of delivery in the city centre and inner area presented to the inquiry amounts to this:

- That city centre delivery depends primarily upon PRS schemes;
- That city centre viability depends upon 2 to 3 sites predicting a theoretical viability of delivery of almost 4,000 units based upon minimum profit, minimum land prices, and an educated guess on abnormal costs and developable areas;

[16] See Figure 13 of LPA7

Richborough Estates

- That inner area delivery depends upon volume builders taking on sites that it is acknowledged are unlikely to meet their views on viability or their business model and a handful of low cost builders increasing their regional output by an unrealistic degree so as to achieve some 5,816 units;

- That inner area viability depends upon, for the 60% or so of the sites analysed by the DVS as viable, developers taking minimum profit, landowners taking minimum value, and the similar educated guesses on abnormal costs and developable areas as with city centre developments (bearing in mind that viable on this basis is in many cases only just short of a negative return). For the 40% or so judged by the DVS not able to produce a positive return, viability depends upon an assumption that, with enough pressure, developers would take less than minimum profit and/or landowners less than minimum land value.

51. On any level these propositions are weak for over 40% of the SHLAA based supply. In more detail the appellant's response to these points is:

- PRS – Nothing has been built or is being built and no investors are identified. The capacity or appetite of this new idea is unknown and untested. Strong demand from occupiers does not equate to strong demand from institutional investors or evidence on landowners' returns. The appellants are aware of discussions on two sites - Globe Road and the former Yorkshire Post site at Wellington Street. Globe Road is being sold by Wimpey City who cannot make it work as a volume house builder formerly involved in city centre development. Mr Roebuck has optimistically ascribed 150 units delivery from this site (130 less than the Council) but this is a position reached on the basis that an institutional investor could be tempted to proceed and views it as a sound proposal. On Wellington Street there is no difference in numbers between the parties but on the same conditionality. The only other site where there are discussions is Ingram Row (Dandara) but the background to this site is important. Dandara have not made the site work for years, need a permission to replace the previous expired one and PRS is being explored. There may be plenty of valid business reasons for having a new permission and considering a different angle of delivery. For this untried and untested approach to development, the evidence can be summed up as falling short. The Council suggests that there are, outside the topic of PRS, traditional developer-led schemes in the city centre. Mr Roebuck gave evidence on this. He explained that this could happen as part of mixed use schemes once the commercial element was pre-let, but there is no indication that it is happening now at any material level.

- City Viability – the Council approach is to look at a small sample of sites on a site-specific basis and claim this presents a picture of theoretical viability across the whole city centre. The assumptions as to viability are questionable. The approach is akin to a stressed situation with the developer and landowner already committed to the development. It does not reflect the realism of choices and assumes those parties will have to live with minimum profit and land values. The appellant's evidence is that a market-facing view of profit and land would be higher outside such a stressed situation, when choices are available with other sites elsewhere (indeed in other districts that are already

Richborough Estates

proving more attractive to volume house builders)[17] and better opportunities of return. Abnormal costs will always be site-specific and there is not the luxury of having the information. Whilst abnormals could be more or even less, this itself brings into question this whole exercise which involves 2 or 3 partially complete specific site assessments claiming to reflect a wider picture of the viability of almost 4,000 units. Exactly the same can be said of net to gross areas. There are other significant areas of dispute on the assumptions.

- The EVS update was the only document on detailed viability put to the CIL and CS Inspector. The DVS report was not presented. The EVS update's entire premise is to define, at various levels of selling prices for apartments in the city centre, the price that could be afforded to be paid for land. It is at odds with the DVS first report because:

a. The sales prices per square foot of the DVS report indicate figures similar to the claimed 'mid point' indicating an amount that could afford to be paid for land according to the EVS, lower than the DVS minimum.

b. Properly converted to £/sq ft, taking averages and avoiding using only the expensive riverside apartments with small sizes that skew the figures, the current sales prices are below the mid point.

c. On this basis the EVS update 'current asking prices' are wrong, unreliable and unsupportable.

d. For the same reason, according to the EVS update, the price that could be offered to be paid for land in the City is well below even the Globe Road (strictly inner area and not city centre) figure used by the DVS which was described by the Council as a 'fair land value' for an average site.

e. The outcome of this is that the CIL Inspector made a finding on unreliable evidence, inconsistent with the Council's current case and there is a real risk, based upon the difference between the EVS update and the DVS work, that minimum land prices will not be capable of being afforded, leaving land incapable of being brought to market and development unable to proceed.

- Inner Area Delivery – There is no suggestion from the Council that the delivery capacity of the low cost builders is anything other than as presented by the appellants. Additionally there is acceptance (save as set out below) that volume builders find delivery in this area does not fit with their business models, is unattractive and, by their approach, unviable. The only references to the contrary from the Council are to one site at Wortley that is not in the inner area, and 2 or 3 sites in the EASEL area that Bellway are looking at (and who are the Council's partner in the EASEL project). This handful of examples demonstrates little in the context of the Council's expected delivery of 5,816 units. Wortley is a secondary site and is modest in scale. Bellway have various historic commitments to EASEL. The suggestion that, if greenfield sites are not made available, inner area sites will be delivered is no part of the Council's regeneration case. It is also inconsistent with Policy H1 of the CS. The allegation that builders are driven by their profit margins is of course true. They are businesses seeking to make money. That fact has to be taken into

[17] Wakefield was given as an example

Richborough Estates

account in assessing the realism of delivery, not discounted based on a sequential test style argument, long since absent from national and local policy.

- Inner Area Viability – The general points regarding city centre viability, abnormal cost and assumptions apply. The difference here is that the sample of specific sites tested is larger at 22. The apparent suggestion from the Council's exercise is that this sample reflects the wider theoretical viability of the inner area. For this reason it does not matter that a couple of sites found non-viable in the first DVS report are no longer in the supply. If the Council's point is that all in the current supply are viable it should have tested them all. If the point is the sample sets the tone of the wider viability of that area it has to live with the outcome that 2 of the original 5 and 7 of the additional 17 produce a negative return, even with minimum profit and minimum land price and all the other contested assumptions. This is 9 out of 22, or 40%. Applied to the inner area total this is 2,326 units that would be producing a negative return, with many of these producing a surplus so small as to be highly susceptible to minor changes in assumptions. Even the DVS report concedes that the approach taken to viability is no guarantee all developers will adopt the same approach.

Other SHLAA Issues

52. The Council optimistically includes 84 sites with expired permission having a combined supply of 1,193 units. The evidence is that only 4 sites have come back for renewals. Whilst it is understood that these 4 sites are examples, the optimism that all these expired permissions will be renewed and proceed to deliver does not meet the policy test of realism.

53. It is also clear that one area of dispute with the HBF was sites currently occupied by other uses. This again highlights not only optimism, but a failure to show that such sites are available now as required by the Framework.

54. The response to the appellant's sense check[18] is also unconvincing, particularly as several of these sites were conceded at the original inquiry. Of the 33 sites (Council claimed five year delivery of 4,253 units) the DVS is relied upon for only 4 and offers no further comment on 14 (42%). Where comments are offered, Mr Dunbavin explained with evidence his position, but the Council rely on assumptions such as that the market view of an area might change if a PRS scheme delivers near it, or in one case, that the Council has asked a developer if residential can be included in a retail scheme and hopes they will.

HILS and other initiatives

55. The regeneration evidence is now clear but adds little to the Council's case

- It is not suggested that greenfield land should be held back to assist delivery of brownfield/regeneration and there is agreement with the SoS findings at the Grimes Dyke appeal that there is no case for doing this;

- There is a need for housing growth generally;

[18] ID14 of APP8

Richborough Estates

- None of the sites/initiatives referred to increase the supply figure relied upon by the Council;
- It is agreed that 40% of the supply referred to is not on the market in any formal sense, which must question its availability even if someone could theoretically buy it 'off market';
- Of the 2,700 units claimed to be deliverable from all sources discussed, this is as a result of actions that it is hoped will cause delivery rather than (save the modest item of new Council housing) actual planned delivery. It is at best a very modest response to the delivery concerns over almost half of the 23,450 SHLAA units.

Older People and Students

56. The problem with relying on completions from older people is one of monitoring and clarity of data. The Council's Monitoring Report requires either that they free up housing or are akin to C3 as self contained units.[19] No information is available on either point. In addition whilst older people's accommodation is in the supply, it has not been separately identified. The difficulties of this are made clear in the Elworth Farm appeal decision[20].

57. Finally, for student accommodation of some 895 units there is no supply identified. There is no challenge by the Council to the Student Growth Papers[21] or its conclusions that the rate of student growth in the next five years will massively outstrip supply from these 895 units. This growth in student numbers will not only exceed the 895 unit student supply, but occupy other housing needed for general requirements. The effect will be a net reduction in supply. There is no evidence that a specific level of student growth was a component in the SHMA or CS. In addition there is a specific net reduction in supply through the demolition of one of the University's main halls of residence at Boddington Hall. Both the PPG[22] and the Council's monitoring policy in the CS[23] say that students only count if they 'free up' existing stock. The evidence here is that the 895 units will not only fail to free up existing stock but will also be far too little to accommodate student growth.

Other Supply – Windfall

58. Almost 6,000 units (5,913) or 20% of all supply is windfall, for which the Council needs to demonstrate compelling evidence[24] and in the case of empties 'robust evidence'.[25]

59. In the case of empty properties there are two conflicting figures for completions in two years and a single figure for an average over a four year period. The evidence simply cannot be interrogated for veracity. There is no information at all of the number falling vacant by year; the number being occupied by year; the

Richborough Estates

[19] Pages 36 and 37 of CSIR
[20] See Footnote 14
[21] ID17 of APP8
[22] 3-038
[23] Page 37 of CSIR
[24] Framework paragraph 48
[25] PPG 3-039

types of properties; the approximate location of properties; and no return data of any sort has been supplied.

60. Indeed there is virtually nothing that can be analysed, despite the Council's own proposed monitoring for the CS requiring it.[26] The dearth of information of past achievements is then used to project future delivery. The Council's position has changed from 300 per annum (March 2014) to 400 per annum (May 2014). It is also clear that the re-occupation of empties is a finite resource of supply and there is an apparent maximum of 2,000 units achievable all of which is claimed in the five year period.

61. The initiatives identified to deliver future re-occupation appear to show much lower delivery. Funding is available for some 140 units over 3 years, following the achievement of some 70 – 80 over the last two years from similar sources[27].

62. Prior approvals from office to residential use amount to 632 in the Council's supply. No more than 5 units have been created from this source in the last 18 months and the compelling evidence to rely on this source is simply absent. There may be many reasons why such an approval would be obtained and not carried out, such as bank valuation exercises.

63. A further 600 is claimed from larger windfalls (on top of 2,500 from windfalls already allowed for), the sole evidence for this is 2 years permissions on sites that are not in the SHLAA. These are permissions (not starts or completions) and are insufficient to show trends or compelling evidence.

64. Altogether there are now 4 different types of windfalls claimed - small, large, empties and pre-determinations - each stretching further the bounds of compelling evidence to try to show greater supply.

Conclusions on Five Year Housing Land Supply

65. The appellant's summation of all of these points is that the 5 year supply is 16,873 units. This includes a total of 3,619 windfalls, 1,000 of which are from empties. Against the Council's view of requirement, adjusted to make good undersupply in 5 years and using a disputed 5% buffer (23,858[28]) this amounts to 3.5 years supply. Against the appellant's requirement this is 2.7 years supply.

66. The appellant's conclusion that there is no 5 year supply by some 6,985 units even against LCC16 is not altered by accepting the Council's position on empties (a difference of 1,000 units between the parties). Indeed if one was to accept the Council's position on all windfall this would still leave the need to disagree with the appellant's analysis on more than 4,691 units in the SHLAA to conclude that a 5 year supply exists against the 5 year catch up requirement figure in LCC16.

67. On any sensible basis the Council cannot demonstrate a 5 year supply, but even if it could, there is nothing in the CS or national policy that allows refusal because there is a 5 year supply unless harm can be demonstrated. In this case there would be none.

[26] Page 38 CSIR
[27] ID19 of APP8
[28] LCC16

Richborough Estates

Ecology

68. The appeal is in respect of an outline application, with only the means of access into the site (and not internal vehicular layout) to be determined at this stage. FRAG's evidence to the reopened inquiry related solely to the potential impact of the development upon bat species, being species of community interest for the purposes of Council Directive 92/43/EEC 1992.

69. The material before the reopened inquiry to assess the potential impact of the development upon bats is greater than at the original inquiry. No alternative evidence relating to potential impacts on bats has been presented and no greater or different effects have been identified. The appellant and the Council are agreed in their assessment as set out in the SOCG [*IR4*]. FRAG offered no comments on the appellant's bat report 2014 following its formal advertisement in July 2014.

70. Should the SoS be minded to grant outline planning permission for the proposal, the appellant, the Council and FRAG have each reviewed and agreed draft conditions, which include pre-commencement conditions relating to the approval of a construction environmental management plan, a bat mitigation plan, a biodiversity enhancement and management plan and a lighting design strategy for bats. As the application is in outline, at this stage no trees or other features of potential value to bats have been identified as being necessary for removal in order to facilitate the development.

71. Dr Webb provided a clear and convincing rebuttal of FRAG's evidence. It is submitted that the survey and impact assessment work undertaken on behalf of the appellant contains sufficient information of an appropriate expert standard for the SoS to assess the appeal site's use by bats and the likely level of any impacts upon bat species. Dr Webb confirmed that in his view it is very unlikely that a Natural England mitigation licence would be required as a result of the proposed development.

72. The crux of FRAG's case before this inquiry centred on a misinterpretation of the role and relevance of guidelines published by the BCT in 2007 and 2012, as a means of challenging the robustness of the appellant's bat survey work.

73. A responsible practicing ecologist will refer to and follow the BCT guidelines where appropriate, but will do so in conjunction with other relevant guidance including that of CIEEM who emphasise the role of professional judgment in devising and undertaking ecological work. It is for the ecologist to apply professional judgment to the case in question, and to determine an appropriate level of survey work accordingly.

74. FRAG's evidence seeks to apply an inappropriate degree of stringency to the BCT guidelines but also to superimpose value judgments different to those made by the expert ecologists. For example it was argued that WSP's expert assessment of the application site's value to bats is incorrect and instead when applying the indicators of site value set out at Tables 3.1/4.2 of the 2007/2012 editions the site ought to have been assessed as having a 'medium to high' value, rather than the 'low to moderate' value ascribed by WSP following the 2012 survey work. In evidence in chief, Dr Webb emphasised the overlapping nature of the continuum of indicators, and described how he considered indicators (7) and (12) to be

Richborough Estates

inappropriate in this case, and that an assessment of 'low to medium' was a fair appraisal. He drew attention to the accompanying text to Tables 3.1/4.2, which expressly reference the role of expert judgment in assessing a site's value to bats.

75. Much of FRAG's misplaced criticisms of the WSP activity survey efforts flow from this ill-informed assessment of the site's habitat quality/value (as against the suggested indicators in the BCT guidelines). Dr Webb explained how the level and nature of the guideline survey effort varies depending upon the site's value assessment. In this case, both the type and quantity of survey work was commensurate with a large site of low to medium habitat value to bats (as described by the 2012 guidelines), and assessed as being correct by Dr Webb. The site was surveyed throughout all surveying months from August 2011 to July 2012 (with the exception of April 2012). The survey data is more than sufficient for a large site of low value, and only fractionally below that suggested for a large site of medium value. The appeal site is only just above the suggested threshold to constitute a large site and the proposed development is very different in its character and likely impact to the type of major or nationally significant infrastructure project to which the recommended survey frequency for large sites is directed.

76. Dr Webb plainly explained how the level, amount and type of survey work undertaken by WSP in both 2011 and 2012 was appropriate and consistent with the practice guidance contained within the relevant BCT guidelines (and others), and concluded that the findings of the WSP surveys were robust in both assessing the likely level of impacts upon bats and in recommending mitigation where required.

The Case for the Council

The material points are[29]

77. These submissions only deal with matters that have changed since the original inquiry in November 2013. They do not seek to repeat the matters set out in the closing submissions then. Therefore, they need to be read together with those earlier submissions.

78. The relevant material changes of circumstance since November 2013 are the adoption of the CS; the proximity to the publication of the Council's report on the SAP DPD; the production of the SHLAA 2014; the upholding of the Interim Policy by the High Court; and further ecological information on bats on the site.

79. The Council's reason for refusal was that it was premature to grant planning permission for housing on this site in advance of the production of the SAP DPD, given that the site is a PAS site in the UDP, and the UDP is entirely clear that such sites should not be released for housing until there has been a comprehensive review of sites.

80. The appellants argue that the Council does not have a 5 year housing land supply and therefore, by reason of paragraph 49 of the Framework, planning permission should be granted.

[29] Summarised from the Council's closing submissions LCC19

Richborough Estates

81. In November 2013 the SAP had only reached Issues and Options stage, and there was a long list of sites which were to be further considered, many of which were amber and would have to be allocated. We are now at the position by which in January 2015 the Council will produce a report to the relevant committee which will set out those sites that the Council intends to put into the publication draft of the SAP. This report will therefore put into the public domain the Council's choices about which of the amber sites it thinks should be taken forward to allocation. So it is virtually certain that by the time of the SoS's decision the Council's position on site allocations will be known. This is not the end of the process, but it is a vitally important stage within it.

82. In deciding the phasing of the release of sites the Council will have to comply with Policy H1 of the CS, i.e. that there should be a distribution of sites between greenfield and brownfield.

83. In those circumstances it would undermine the plan led system for the SoS to grant planning permission on a large safeguarded site just at the moment that the next stage of the DPD process is published. The Issues and Options paper produced a massive public response, and there has been a very high level of public engagement. As has been clear through this inquiry this site is extremely important to the residents of Farsley and there has been a very large amount of opposition to the application. Local residents have been closely involved in the SAP process. If the SoS grants planning permission almost immediately after the Council's decision on the public consultation process becomes known it will inevitably destroy public confidence in the planning system in this area. What was the point of local residents engaging in the SAP process if it is simply ignored on a planning appeal?

84. Such an outcome also means that there is no opportunity for sites which are allocated to come forward, in accordance with the CS and SA DPD, as should be the case in a plan led system, but instead there is planning decision making by appeal. There the localism agenda, by which local people are involved in the choice of sites, becomes otiose.

The Core Strategy

85. There are a number of policies in the CS which are central to this inquiry. It has a housing target for the plan period of 70,000 dwellings. This must be one of the highest requirement figures in the country. The step-up, which was fiercely opposed by the house builders generally and the appellant at the original inquiry in 2013, was accepted by the CS Inspector and is now in Spatial Policy 6. The spatial distribution is set out in Policy Spatial Policy 7. The greenfield/brownfield split is in Policy H1.

86. The way that these policies are to be met in practice is left to the SAP which will allocate sites. Therefore again the plan led system would be undermined by the grant of planning permission because a decision would be made outside the SAP process.

Richborough Estates

The five year land supply

Requirement

87. The starting point on the requirement is the 3,660 in the CS and the Inspector's reasons for accepting the Council's case on the step up. The Inspector accepted that to impose a requirement higher than that would have serious impacts on Council's ability to achieve the plan policies, and to meet the objective of sustainable development.

88. The first issue is whether a buffer of 5 or 20% should be applied. In terms of persistent under delivery there is no rule as to the period to be looked at. In Leeds's case there was no under delivery until a combination of the recession and the RSS stepped up requirement both hit in 2007/8. Any analysis of under-delivery since then is subject to the problem that the requirement in the RSS was accepted by the CS Inspector to be based on a flawed evidence base.

89. There has been under-delivery since the CS base date, but that in itself does not amount to persistent under-delivery. The second issue is whether it is appropriate in Leeds in any event to apply a 20% buffer, and what that would achieve. The purpose of the buffer must be to improve delivery – it is not a punishment. It is very clear that if a 20% buffer is applied then on the appellant's case LCC has no realistic prospect of delivering a 5 year land supply save with a massive greenfield release, the majority of which is likely to be currently designated as green belt. This would then lead to the problems that the CS Inspector had in mind. It would also completely undermine the SAP process and the choices to be made therein.

90. Further there is the issue of the purpose of imposing a 20% buffer on Leeds. On the appellants' case the only way that Leeds can meet its 5 year land supply is by a massive release of greenfield sites in advance of the SAP. This may lead to some more houses coming forward, but on the evidence at this inquiry not very many and not for a number of years. But that is at the cost of undermining the plan led system and public confidence therein, and effectively accepting the house builders case that they will not develop outside prosperous suburbs and the countryside.

91. The appellant places great weight on the fact that this site is agreed in principle to be sustainable. But that does not mean that in terms of other sites within the HMCA it is a preferable site in sustainability terms. It is simply impossible, before the SAP is produced, to know how this site sits in a comparative sustainability analysis. So releasing this site now may well be a very negative decision in terms of sustainability. This will be one of the largest sites in this HMCA. That is why the larger sites are excluded from the Interim PAS policy, given their greatest impact on sustainability and therefore the greatest need to consider them through the SAP.

92. Even if more greenfield sites are released this would result in very little, if any, increase in supply. Since 2011 LCC has released a large number of greenfield sites, through the UDP Stage 2 and 3 sites, and the Interim PAS policy sites. However, there is no evidence of this feeding through into an increase in completions. Indeed completions from volume house builders have actually fallen this year despite the much increased number of greenfield permissions

Richborough Estates

since 2011. The appellant says that is just because of the time lag, but that does not seem to make much sense given the actual fall in numbers. It seems much more likely that the house builders do not wish to build out quickly, in order to maintain profit levels. Obviously if more greenfield sites in desirable locations are released there will be some increase in delivery, but it does not seem likely to be a high number in the light of the existing evidence. The appellant wishes to bring this site forward for sale quickly, but the evidence is replete with examples of developers being very bullish about delivery speed at the point of getting planning permission, but the reality being somewhat different.

93. Finally Leeds is 'different'. There are particular characteristics that make the problems of imposing too high a requirement a particular issue in Leeds. Firstly, it is a very large authority so the absolute numbers are very high – possibly the highest in the country. Secondly, its CS requirement has been set on a high growth basis, and if the appellant is to be believed that is not being reflected in the housing market. Thirdly, it has a large urban area with a huge stock of brownfield land in need of regeneration, but surrounded by countryside. This means (a) the need for regeneration including housing led, is manifest; and (b) the Framework causes a particular problem because there are potentially large numbers of greenfield sites. Contrast metropolitan authorities where there are much tighter boundaries and therefore there can be no argument about housing land supply being met on greenfield sites. Fourthly, Leeds has a very attractive city centre which (like Manchester) saw major residential development in the boom much to the benefit of the City. There is no reason that this cannot be achieved again in accord with the CS policies, so long as the Framework is not used by the volume house builders to undermine the plan led approach.

94. These arguments apply equally to dealing with the backlog which should be spread over 10 years. It is necessary to consider what are the purposes sought, the consequences of increasing the requirement and the reasons why the target has not been met since the CS base date. So in the Council's view the requirement is 22,570.

Supply

95. This case raises some really critical issues about how 5 year land supply is approached in an authority like Leeds with a stark mix of areas and therefore housing sites. Again this is situation which makes Leeds unlike many of the authorities where there have been previous Inspectors' decisions. Leeds is not a south/south-eastern authority where the vast majority of sites are greenfield and there may be issues around choice of sites, but not around the more fundamental issue of the nature of the development industry.

96. The appellant's argument at this inquiry has been that the volume house builders are only interested in sites in financially 'robust' areas and not in sites in the city centre or inner area and have very little interest in building flats. Their business model is primarily, if not virtually exclusively, to build two-storey family housing. The argument put by the appellant is that the effect of the Framework is to allow them to reject sites in the city centre or inner area, whether financially viable or not, and then say that there is no 5 year land supply because sites in these areas are not 'deliverable'. The effect of this argument is to allow the volume house builders to demand that further sites be released in their choice of area, many of

Richborough Estates

which would inevitably have to be greenfield sites. This is a complete subversion of the policies in the CS and indeed the Framework.

97. The policies and approach in the CS inform the approach to the 5 year land supply. The Council was criticised for taking an 'optimistic' approach to 5 year land supply which the appellant will say is not in accord with the Framework or PPG. However, LCC has based its CS target, and therefore requirement for 5 year land supply, on an optimistic economic growth forecast that necessarily underpins the housing growth targets in the CS. If the targets are based on strong growth, but the house builders reject a very large proportion of the anticipated 5 year supply on the grounds of a pessimistic outlook for Leeds growth and a risk averse business model, then it is inevitable that the Council will not be able to prove a 5 year land supply. The house builders approach is one of relying on recessionary levels of housing in the city centre in particular, and saying that they are now very risk averse because of the recession and will not deliver those sites, or those in the inner area where they are not interested.

98. Further, the CS target is based on an objective assessment of <u>need</u>. The CS Inspector was clear and strongly supported by the house builders, that such an assessment could not take into account the ability of those with a housing need to pay for new housing. In other words the 'need' was considered to be different from whether there was actually a demand which could meet the cost of any housing. Critically the need was also assessed as covering all sections of the community. As is clear from the CS[30] a very large proportion of the need is actually from single households and couples without children. The need for family housing is only a relatively small proportion of the total need.

99. However, that stands in striking contrast to the need which the volume house builders say they wish to meet, and which their business model provides for. The sites they are prepared to develop are focused on meeting the family housing market, so house builders look to areas which are attractive to purchasers of private family housing, and the planning permissions they seek are for this form of housing. There is a self-fulfilling prophecy here, because the CS anticipates that the majority of single units will be built in the city centre and inner area but these are the areas that the house builders will not build in. So the planning applications outside these areas may well meet the policy mix on the individual site but it is clear that the largest segment of the overall need is simply not being met.

100. It is important to appreciate that the house builders (and appellants') position is not about viability of city centre and inner area sites, it is about the house builders' decision not to develop in those areas because it does not suit their business model to do so. They do not wish to develop in the city centre because it would involve large upfront capital investment, which they do not wish to make; and they do not wish to develop in the inner area because the returns are insufficiently high for the volume house builders. It was not argued that the inner area was unviable for the 'low cost developers' but that they operated a different business model, presumably including a lower level of required profit.

101. In these circumstances it is hardly surprising that, if the appellants' case is accepted, Leeds is not meeting its 5 year land supply. The requirement is based

[30] Paragraph 5.2.10

Richborough Estates

on meeting need across the whole community, and the house builders are only purporting to meet the need of one relatively small part. Releasing more greenfield sites will not address that mismatch.

102. This issue exposes a problem with the Framework which may well be at its most stark in Leeds. Leeds is special because it is a very large urban area with masses of brownfield land in desperate need of regeneration, but surrounded by countryside which the house builders would love to build upon, and where large profits can be made. It is therefore an area where the problems of assessing need without regard to ability to pay, and encouraging brownfield development without a clear brownfield first policy support, comes into very direct conflict. The inevitable consequence of the appellants' arguments are that more and more greenfield land must be released and developed, whilst huge swathes of brownfield land stands derelict.

The SHLAA

103. In assessing its 5 year supply the Council did precisely what the Government advised. It formed a SHLAA Partnership, shared the information and sought views of the house builders and others. Planning Officers considered each site in order to determine suitability and availability, and the DVS was instructed to carry out an assessment of viability.

104. However, the house builders' approach was simply to reject a large part of the assessed supply with either minimal comment 'not viable/not available' or no comment at all. The Council sought independent advice from the DVS on viability, and assessed a cross section of sites in order to inform its analysis. The house builders on the other hand produced no viability assessment and simply asserted that city centre and inner area sites were not viable. Many of the sites rejected out of hand by the house builders are actually now considered likely to come forward. The appellant complained about the Council not having engaged with the house builders and having dismissed their comments out of hand. It is very difficult to see how the Council could engage with 'no comment' and what kind of meaningful dialogue could take place with the phrase 'not viable', particularly when there was no evidential support for the comment. What has now become entirely clear from the evidence is that the truth of the situation is the HBF meant 'not interested' and the result of this was that the HBF had no wish to spend time or money on any further consideration.

Richborough Estates

105. The Framework sets out three tests - suitability, availability and viability. For the Inspector and SoS purposes on a planning appeal one can only take a broad brush approach, and this must particularly be the case in Leeds with a very large number of sites in the SHLAA and no reliance on specific large urban extensions to form the bulk of the housing land supply.

106. The Council assessed suitability and availability by considering the known planning position and, where views of owners/developers were known, taking those into account. What is very clear is that land supply in Leeds is highly dynamic. Sites which were accepted as not being part of the supply last year are now under active consideration. Sites which were at the back end of the SHLAA now clearly come forward into the 5 year land supply. There will undoubtedly be other sites that with more information will move the other way. The appellants are in the position of reporting private conversations with landowners/developers but there is no ability to confirm, when those conversations suit the case, but

making no reference to sites such as Wortley that go the other way. That is why objective evidence of viability matters is important as it can be tested and is subjected to objective standards. Evidence which relies on 'I have spoken to the developer /owner and he isn't interested', are impossible to test.

107. Viability is one of the three key tests. It is clear from the Framework and the PPG that viability is an objective test i.e. what would a reasonable developer require to develop, and what price would a willing i.e. reasonable landowner, seek. This policy approach would be rendered otiose if it was then open to the house builders to say that, despite the objective position, they simply were not interested. The issue must be whether the Council can show a 5 year supply of sites which a developer seeking a reasonable level of profit would be prepared to develop.

108. The other 'delivery' issue relied upon is to say that for the inner area the volume house builders are not interested because it does not meet their business model, and there are insufficient low cost developers to bring forward the sites. This is the area where the evidence on the action LCC is taking to bring forward brownfield land is important. The Council is very active in this field, and have a large number of initiatives which will bring forward housing development. The HILS is disposing of land on the open market; promoting an affordable homes programme, including Council housing; bringing forward sites in the housing estates of the inner areas through joint ventures with developers; supporting specialist housing such as self-build and older persons housing; and working in partnership with the HCA on some key sites.

109. There are a number of developers who specialise in this field, and there is a very obvious opportunity for them to expand in Leeds, where there are a large number of sites and a high level of demand (as is clear from the CS figures).

110. There is a clear opportunity for new entrants into this market. The appellants' approach to markets is a highly static one. House builders have a model and they will not change it, existing low cost providers in Leeds will not expand very much, and there will be no new entrants in the market.

111. This again raises a fundamental issue with the Framework and 5 year land supply. On the appellants' evidence what exists in Leeds, certainly in the inner area, is a dysfunctional market. There are sites available which are viable and upon which a reasonable profit can be made, but there are not house builders willing to take up that opportunity. It is difficult to see why that failure of the market should lead to the release of more greenfield sites to volume house builders who are only providing for one sector of need in any event.

112. In terms of financial viability the appellant says that the DVS reports do not consider sufficient sites, or a sufficient cross section to be reliable. This is a difficult argument to sustain. The May 2014 report covered a cross section of sites across the Council area. The Council chose sites where there might be viability issues, and it is difficult to see what was wrong with this approach. The DVS report (as well as the EVS update) suggested that the city centre was a viable location, so the October 2014 report focused on the Inner Area. The sample is a total of 32, so obviously there could have been more. But it seems probable that however many sites had been chosen, the appellant would have said they were insufficient and it must be remembered that the Council is operating in a world of limited budgets where it cannot require endless reports.

Richborough Estates

113. The DVS Reports show that the 3 city centre sites assessed were all viable, by a wide margin. This now seems to be borne out in reality, given that one of those sites was one of the PRS proposals referred to, so there seems to be strong market interest. There are specific factors which will much help viability in the city centre. Many of the key regeneration sites are in Holbeck Urban Village, which will get an enormous boost from the new southern entrance to the railway station helping connectivity both to the station and across the city.

114. There was evidence of discussions with developers on sites such as that at Ingram Row for a very large PRS scheme. This site is not even in the 5 year land supply, and is clear evidence of the growing developer confidence in the city centre. The Ingram Row site is also interesting in terms of the appellant and HBF approach to the SHLAA. This is a site where there is a very strong developer interest. But neither the HBF in the SHLAA process, nor the appellant's evidence, made any mention of it. This and the site at Wortley show the difficulties for the Council in drawing up a SHLAA when the house builders either do not share information, or perhaps do not even know information about city centre sites. The size and diversity of sites in Leeds makes the task of drawing up a robust 5 year land supply assessment enormously difficult notwithstanding the Council's best efforts.

115. There is obviously great interest in the emerging PRS market. It was accepted that private rental demand is strong in Leeds, so it is difficult to see why PRS will not be an important part of the 5 year land supply, particularly given the very high number of units that are involved on individual sites.

116. There are also the more traditional developer led schemes in the city centre which are coming forward. The market is not as buoyant as at its height but developers are looking to start schemes on the upward trajectory of the market, rather than wait for the top of the market and then be building as the economic cycle turns. A brief perusal of the SHLAA schedule shows the number of city centre sites where there are on-going discussions between the Council and developers.

117. There are different issues around inner area viability. Again the DVS report shows viability on a large proportion of sites. The October 2014 report, which was on inner area sites alone, showed that out of 17 only 4 were unviable, 3 of those only by relatively small margins. So on the basic approach of taking a reasonably optimistic view of the economy in Leeds it is not unrealistic to include those 3 in the SHLAA. In terms of demand this is an area where considerable public funding is available to help support schemes and this will lead to a virtuous circle of regeneration. The actions of Bellway at Gipton, a privately funded development albeit within the EASEL area, shows that house builders can be interested in the inner area and the appellants' pessimism may not be well founded.

118. Critically this is the area where the house builders' avowal of lack of interest should not lead to the sites being rejected for the purposes of the 5 year land supply.

119. Finally, in the areas where the house builders are interested there has been a disparity between the build out rates relied upon by the Council, and those of the house builders and the appellant. The Council has analysed build out rates on larger sites completed in the period 2006 to 2014 which show an average rate of

Richborough Estates

46 dwellings per annum. House builders at LCC Plans Panel Meetings have stated build out rates up to 50 dwellings per annum. But the house builders suggest that a lower rate would be more realistic. Again this comes back to the fundamental issue as to how far the HBF should be allowed to dictate the 5 year land supply, and rely on their own business model to force the release of greenfield sites rather than the Council's housing mix policy (H4) in the CS. The evidence is clear that house builders on high demand sites choose to deliver at a rate at which they can maintain the price and thus their profit levels. It is clear from the DVS evidence that those profit levels are well above what is required for viability.

120. Two examples are (1) Spofforth Hill, Wetherby, a large PAS site in a very high demand area (the Golden Triangle), where the developers are now saying they will only have two outlets and build out 68 units per year. This makes perfectly good commercial sense but inevitably reduces the 5 year land supply. And (2) Kirkstall Forge, a very large site with permission for over 1000 units, of which about 750 are flats. There is no issue about the site being viable, but the HBF/appellants say the houses will be built first, thus again significantly reducing the number of units within the 5 year land supply. Again this may make commercial sense, but from the Council's point of view this is a large site which could make a far greater contribution to the 5 year land supply, if the developers chose to reflect the housing mix set within Policy H4 of the CS.

121. The contribution of older persons housing and student accommodation is taken into account both in assessing completions since the start of the CS period and in contributing to the 5 year supply. Although it is difficult to assess whether such sources free up existing stock and further guidance is expected on this from DCLG, the PPG and CS refer to such sources. The CS Inspector accepted that such accommodation could contribute to the 5 year supply and included it within the monitoring framework.

Other Sources of Supply

122. In addition to SHLAA sites, there are some other sources of supply that the Council include in its 5 year calculation. A PAS site at Methley for 181 dwellings not included in the SHLAA has been released despite not meeting all the interim policy criteria. Small windfall sites account for 500 dwellings per year as accepted by the CS Inspector. Larger windfall sites have also come forward in the last two years providing about 450 dwellings. Taking into account that sites with planning permission will already be included within the SHLAA, 600 units are predicted from this source.

123. Prior approvals that allow offices to change to residential have produced the potential for 316 dwelling units so far half way through the three year relaxation. An equivalent supply is predicted for the remaining 18 months.

124. The PPG refers to the contributions that empty homes can make towards meeting housing need. The CS Monitoring Framework includes reference to empty homes. There is robust evidence that there have been 800 'completions' in 2 years from empty homes and some 2000 dwellings will come forward from this source as set out by the Council's Private Sector Housing Manager.

Richborough Estates

Ecology

125. In respect of ecological matters, the Council is content that there is sufficient information upon which a decision can be made.

Conclusion

126. To grant planning on this large greenfield site shortly before the publication of the report on the Council's position on the choice of sites to be put into the SAP would be premature and undermine the plan led system, and public confidence both in the planning process and the reality of the localism agenda.

127. In terms of the 5 year land supply the base requirement is 20,380, the shortfall against the CS is 2,342 which the Council spreads over 10 years making 1,171 relevant to the 5 year land calculation and therefore the total requirement is 22,629. A 5% not 20% buffer should be applied. There is no history of persistent under-delivery, and in any event applying a 20% buffer can only result in the release of unallocated greenfield sites, contrary to the strategy of the so recently adopted CS.

128. The Council's supply figure is 29,504 based on a reasonably optimistic view of Leeds economy over the next 5 years. That is entirely appropriate given that it precisely mirrors the approach to growth in the CS which underpins the requirement figure.

129. The appellants' rejection of the majority of the sites in the SHLAA turns not on their viability, but on the argument that they do not meet the volume house builders business model and there are no other companies willing or able to develop them. This approach should be rejected. If the sites are viable, suitable for the use proposed and available then they are appropriately within the 5 year land supply.

130. In these circumstances the appeal should be rejected.

The Case for Farsley Residents Action Group (FRAG)

The material points are[31]*:*

Site Value for Bats

131. FRAG maintains that both the appellants and the Council have failed to ensure that the current planning application is supported by evidence to allow the potential harm to protected species to be properly assessed.

132. At the original inquiry neither FRAG nor the Inspector was aware of the existence of the 2012 ecology and bat surveys. FRAG wrote to DCLG in April 2014 indicating that the appellant had failed to submit the 2012 surveys.

133. The 2011 surveys indicated that there were no potential bat roosts on the site and that the site was used purely for commuting and foraging purposes by a small number of Common Pipistrelle bats. The 2012 surveys found other bat species using the site and that a number of potential roosts had been found thus indicating that the value of the land to bats was significantly higher than

[31] Summarised from FRAG's closing submissions FRAG9

Richborough Estates

originally estimated. FRAG did not comment on the bat impact assessment report 2014 when it was released for consultation as, by that point, the inquiry had been re-opened so the information would be addressed in evidence.

134. In response to the appellants' assertion that the BCT Guidelines should not be applied rigidly and should be considered alongside other advice, the 2011 surveys refer almost exclusively to the BCT 2007 Guidelines[32]. The reason given for undertaking the 2012 surveys and 2014 bat report was the publication of the BCT 2012 Guidelines[33]. The only guidance referred to in the surveys, other than that related to desk top studies and risk assessment, are the BCT Guidelines.

135. The BCT Guidelines refer to minimum recommended levels of surveys and the need to explain any deviation from the minimum. This implies that, whilst judgement can be applied, more surveys would be appropriate rather than less in comparison to the recommended levels. It is considered that the appellants have not adhered to the minimum and have not explained the rationale behind the deviation.

136. Taking into account the guidance, the site should be classified as moderate to high value based on the 2011 surveys and 2007 guidance and comfortably as medium value based on both the 2012 surveys and guidance. The points of relevance, ordered as in Table 4.2 of the Guidelines, are that (5) there are several potential roosts in trees; (6) the habitat could be used for foraging; (7) the site is connected with the wider landscape by linear features that could be used by commuting bats; and (12) bats have been recorded or observed using an area for foraging or commuting close to potential roosts.

137. The appellant agrees that (6) and (7) are relevant but dispute (5) and (12). The survey data in respect of roosts shows two to three Common Pipistrelle were possibly seen emerging from Tree 21 and three of the same species from Tree 36 or 37 suggesting three suspected roosts of small numbers of Common Pipistrelle which might be used as transitional roosts or potentially as hibernacula. The appellants consider that point (2) is applicable – a small number of potential (opportunistic) roost sites (i.e. probably not maternity roosts or hibernacula). FRAG submit that (5) is more relevant as the roosts are potentially hibernacula.

138. In relation to (12) Tree 21 contains a potential roost and is close to both a major commuting route along the western boundary and a second commuting route along the northern side boundary. The appellants' inference that a hibernation roost should contain a large number of bats is not referenced in (12).

139. FRAG maintains that the site characteristics, when considered on the continuum between low and high potential value, reflect a medium value based on the 2012 guidelines. Dr Webb confirmed that, if points (5), (6), (7) and (12) were met, then a medium value would be appropriate.

Tree Inspection

140. The number of categories for assessing the value of trees due to be affected by arboricultural work increased from 4 to 5 with the introduction of the 2012 guidance. Some of the categories are similar but in combining the known and

[32] BCT Bat Surveys Good Practice Guidelines 2007
[33] BCT Bat Surveys Good Practice Guidelines 2nd Edition 2012

Peterborough Estates

potential roost categories a level of disparity has been introduced that could seriously undermine the robustness of data. The trees should have been reclassified under the 5 category system and the methodology explained or a new preliminary roost survey undertaken following the 2012 guidelines.

Survey Efforts

141. The 2007 guidelines recommended that 4 surveyors were used on sites of between 5 and 25 ha but only 2 surveyors were used in the 2011 surveys. Moreover, the surveys did not extend over several nights to compensate for the lesser number of surveyors. Based on a site of moderate to high value 2 to 3 activity surveys should have been undertaken between April and September and at least one of these should have been a dusk and dawn or dusk to dawn. Only 2 dusk surveys were undertaken, one at the end of August and a second towards the end of September. These factors mean that the 2011 survey data was not robust.

142. The 2012 surveys did not meet the minimum requirement for a site of over 15 ha of medium value as recommended in the 2012 guidelines. There were surveys in May (dusk), June (dusk) and July (dusk and dawn). Automated surveys were also undertaken over 5 consecutive nights in June and September but during the latter the detector in the south-west corner of the site did not function on 16 September for a period. The guidelines recommend 1 visit per line transect per month April to September/October and at least one of the surveys should be dusk and pre-dawn or dusk to dawn. Automated surveys should comprise 2 locations per transect with data collected on 5 consecutive nights each month. The shortcomings are that no activity surveys have been carried out in April or August and the automated survey undertaken in September was not complete.

Presence/Absence Surveys of Trees

143. Surveys were undertaken for all trees recommended for arboricultural work. The 2012 guidelines recommend that for a tree 2 surveyors may be adequate but it is better to have some surveillance overlap. Tree 21, close to the north-west corner of the site, has several potential roost entry/exit points[34] but FRAG's analysis of the 2012 survey document suggests that only 1 surveyor was used. Given the potential roost and the high number of bat passes in the vicinity of the tree, many more bats may have emerged from the tree than recorded, hence undervaluing the importance of the roost. This affects the factors fed into the assessment of site value.

144. These circumstances have parallels with an appeal in Upton on Severn where the Inspector commented that the use of only 1 surveyor is unlikely to produce reliable results[35]. The species of bats present was different but the points about the practicalities of carrying out a survey are relevant.

145. In considering whether the value of the site has been correctly assessed and the survey effort is appropriate, regard should be had to a recent legal case where Mr Justice Stewart found that the decision maker did not have regard to the requirements of the Habitats Directive in establishing the presence or otherwise

Richborough Estates

[34] See Document R6.8
[35] See Document R6.6 - Appeal decision ref: APP/J1860/A/13/2199166 dated 4 March 2014

of protected species and the extent that they may be affected by the development before planning permission was granted[36].

146. Article 12 of the Habitats Directive prohibits the deliberate disturbance of bats or the deterioration or destruction of their breeding sites or resting places. In certain circumstances a mitigation license can be issued to permit activities which would otherwise be unlawful. But derogation tests have to be met.

147. In this case the arboricultural report recommends category R trees are felled as they have a minimum safe and useful life expectancy but notes that some of the recommendations could not be considered necessary if the site was not developed. Tree 21, as a category R tree and unsafe, needs to be felled if the development goes ahead but otherwise would probably not need to be removed. A mitigation license would be required for its felling because it potentially contains a bat roost. As a result Article 12 is engaged and the derogation tests need to be considered. As pointed out by Judge Waksman[37] if it clear or very likely that the tests cannot be met then planning permission should be refused.

148. In this case there is no imperative reason of overriding public interest and there are satisfactory alternatives both of which will be confirmed with the publication of the draft SAP in 2015. Therefore, the derogation tests are failed.

149. FRAG submits that the appeal should be rejected.

The Case for Interested Parties

Stuart Andrew MP

150. Mr Andrew said that he was pleased that the inquiry has been reopened and that the appeal is being given the scrutiny that it deserves. The site is important to Farsley and the appeal has galvanised people locally. The infrastructure concerns, about congested roads, pressure on school places and difficulties of accessing local health care, well presented at the original inquiry, remain.

151. In terms of the five year land supply, the CS hearings were focused on housing numbers. Whilst the house builders fought to have a figure of 90,000 homes included as a requirement, local groups sought to explain the impact that such an excess number of houses would have. LCC was exhaustive in defending its requirement of 70,000 homes and the CS Inspector found this number to be sound. It is noteworthy that the house builders did not attend hearing sessions on transport or employment emphasising that they are only interested in housing targets so that they could maximise the number of sites and cherry pick the most profitable sites. This approach would not address the real housing needs of the city.

152. The step up was accepted by the CS Inspector. The Council has provided significant evidence that it has a five year land supply. If the buffer is increased it will have the effect of bringing greenfield sites forward too early. Moreover, the number of houses being delivered is increasing as we come of out recession,

Richborough Estates

[36] Bagshaw and Carroll v Wyre Borough Council [2014] EWHC 508 (Admin)
[37] R (on the application of Simon Woolley) v Cheshire East Council [2009] EWHC 1227 (Admin)

helped by schemes assisting first time buyers. So the need to increase the buffer is negated.

153. The Council is very well advanced with its site allocation process, not an easy task for one of the largest cities in the country with specific issues to address. LCC has been working with local councillors to identify sites for the SAP, with particular focus on brownfield sites which may come forward as the economy improves. This reflects the Government's objective of brownfield first which is supported by a £3m fund to get sites moving. At this critical point in the process it is important that we do not give up valuable greenfield sites such as Kirklees Knoll.

154. House builders are casting aside brownfield sites, including city centre locations, saying that they are not viable. But this pessimistic view is put forward so that they can get land such as Kirklees Knoll released. And it is against their business model of wanting to build 4 and 5-bed houses rather than the starter homes and accommodation for older people that would be well suited to brownfield sites, represent a significant part of the actual housing needs of the city and would help to achieve more sustainable development and regeneration.

155. In addition the issue of the five year supply needs to be balanced against the objectives set out in the foreword to the Framework about protecting the natural and historic environment and the achievement of sustainable development through the consideration of the document's policies as a whole. Moreover, development should be plan led, enhance and improve where people live, take account the character of different areas and conserve and enhance the natural environment.

156. In terms of being plan led, more people in Leeds and in the constituency have become engaged in the planning process in recent years as promoted by the Framework. This is reflected in attendance at public meetings, involvement in neighbourhood forums, survey returns and the formation of community groups. But these processes, including the inquiries and hearings, are time consuming, difficult and sometimes daunting. Nonetheless people go out of their way to gather information and evidence to support a plan led approach because they want to be part of it and see sustainable communities.

157. Given that we are seeing greater engagement, the most sustainable sites are being identified, the CS has been found sound, there is a five year supply of housing and LCC is advanced with its plans, it would pre-empt the plan led process to allow this appeal. And it would send out a terrible message to those who have worked hard to engage with the process. It would be back to the old days when planning was something that happens to them.

158. To allow the development would be premature and would harm rather than enhance the community. The application should be refused. The community should be allowed to decide what and where should be developed through a genuine plan led approach.

John Bracken

159. Mr Bracken is a candidate to be a LCC Labour Councillor for the Farsley and Calverley Ward. He has lived in Farsley for two years in which time he has come to know about local issues having spoken to 10,000 local residents.

Richborough Estates

160. Whilst noting the appellants' case that the build rate should not be a ceiling and a reason to refuse an acceptable scheme, the proposal is not satisfactory due to highway issues, pressure on schools and health care impacts even though the application may satisfy technical requirements.

161. The CS has been signed off as satisfying legal and soundness requirements. It should be the basis for empowering people to shape their own surroundings in accordance with the Framework, PPG and localism. The development would not be sustainable and permission would fly in the face of the Government's mantra.

Jamie Hanley

162. Mr Hanley has lived and worked in the area for most of his life. He went to school near to the appeal site. He is standing as the Labour Parliamentary Candidate for the constituency.

163. He has spoken to more than 9,000 residents in the Farsley Ward and over 8,000 residents in the adjacent ward. There is overwhelming opposition to the proposal, including from FRAG, local councillors and the MP. The issues of highways, schools, health care and local public transport provision remain. In addition there will be impact on a bat habitat.

164. There is 6.4 years of housing supply against the approved CS. Some 550 homes have been approved by an Inspector at the Clarient site on the Calverley-Horsforth border which will increase pressures on local infrastructure and services.

165. It would be remarkable if the SoS went against localism.

Andrew Carter (LCC Ward Councillor)

166. Since the original inquiry circumstances have changed. The CS is now at the point of adoption with the requirement of 70,000 homes, the step up in delivery, the existence of infrastructure and environmental constraints and a spatial distribution, all endorsed by the CS Inspector.

167. He has experienced the SHLAA partnership in deputising for a member. The Council is encouraged to follow the SHLAA process but it is a depressing affair as 25% of the members work against it. There are delays in the HBF representatives providing information.

168. The SoS and the Planning Minister have recently spoken about the need to avoid urban sprawl. Build rates are improving, including on many brownfield sites. This is demonstrated by the monthly meetings with LCC Planners to consider applications and preliminary enquiries for housing in the Ward which demonstrate sites within the HMCA, including brownfield, are coming forward all the time. For example a proposal for 90 homes has come forward on a site adjacent to Belgrave Works, Town Street, Stanningley.

169. The SAP is being progressed and people are aware of what the basis for site selection will be. Some developers will put up a fight. But it surely cannot be right that a site that represents 10% of the Outer West HMCA should be plucked out of the SAP process as that would drive a coach and horses through the SAP process and localism.

Richborough Estates

Ron Wood (LCC Ward Councillor)

170. He is concerned about the felling of the two trees in the south-east corner of the site (T36 and 37). Although a conversation took place with the agent for the Thornhill Estates land[38], it is incorrect to state that the felling was accepted. Contact was made with the tenant farmer because of concerns about livestock. The Project Director for Bellway Homes, when contacted about the work, had no knowledge about it. Mr Wood was not aware of any consent having been obtained from the Council.

Chris Levi

171. The five year supply of housing can include the large number of brownfield sites which are a reflection of the city's industrial heritage. Examples locally include Cherry Trees where there are 24 dwellings, the Old Foundry in Bagley Lane and Sunnybank Mills. The latter scheme reflects good practice in consultation where 16 homes will be integrated into a site with a stream and woodland. In contrast the Kirklees Knoll development will bring no benefits, just negative impacts.

Amanda Carter

172. She chaired the LCC Plans Panel in the past and was involved with the Leeds/Bradford Regeneration Corridor. A number of windfall sites have been coming forward within the corridor, including developments in Pudsey. Kirklees Knoll would be the largest site in the HMCA. There is no need for the site in the context of the Framework and CS.

Philippa Simpson

173. The extensive evidence, including the SHLAA, indicates that there is a five year housing land supply. Her son bought a house recently built by Keepmoat, some 10 minutes walk from Shipley Station. There is a significant stock of brownfield sites which have a regeneration benefit. There is a finite supply of greenfield sites. Brownfield should be the preference.

174. Examples of brownfield sites are land to the north of Morrisons and Elder Road in Swinnow, Kirkstall Forge, Yorkshire Chemicals, Belgrave Works and Clarient Works. Some of these sites are of significant size.

175. The appeal proposal would be premature and should be considered as part of the plan led process within the SAP.

Malcolm Levi

176. As a keen gardener he often sees bats on summer evenings flying to and from Sunnybank Mills. The bats use the gaps between houses on either side of Priesthorpe Road before flying onwards to Kirklees Knoll. The LCC Plans Panel rode roughshod over the requirement to take into account bats when outline planning permission was granted for development on the south-west side of Calverley Lane. It is expected that the SoS will give more consideration to the issue.

[38] See APP11 appendix 3

Richborough Estates

Written Representations

177. Written representations have also been made by four interested persons[39] in response to the notification about the reopened inquiry. The following additional points have been made:

- *Five Year Supply* – It is understood that ONS are shortly issuing updated population projections and estimates for growth are to be revised downwards. If so then the LCC requirement of 70,000 homes by 2028 should also go down.
- *Bats* - Numerous bat activities have been witnessed over the years, including bats hunting over the gardens backing onto the site. FRAG surveys note multiple species. It was wrong not to submit the 2012 surveys prior to the original inquiry. It was also wrong for LCC not to insist on submission of them as it is apparent from e-mail exchanges that LCC was aware of their existence in October 2012. There is no public consultation response from the Council's relevant officer on the public file. Whilst the bat report 2014 recommends further bat surveys at detailed design stage, the appellants should have also submitted up-to-date surveys to ensure a robust assessment given that the last surveys were in 2012.
- *Bus services* – There has been a deterioration in bus services since the original inquiry as the No 86 linking Rodley, Farsley and Pudsey has been withdrawn. This route linked Rodley and Farsley with the Owlcotes Shopping Centre and went close to New Pudsey Railway Station. There is now no daytime weekday service from the nearest bus stops to the appeal site in Bagley Lane. The nearest bus stops to serve the Owlcotes Centre are now at Old Road/Bradford Road. S106 contributions should be directed towards those bus stops that have weekday daytime services. Further services may be withdrawn or reduced in the future making the development even more car dependent.
- *Infrastructure* – The highway network, particularly Calverley Lane, Town Street, the ring road and Bagley Lane, would be severely tested. Measures such as traffic calming would be unworkable. Both local primary schools have had to expand against the wishes of the local community and the school in Calverley is oversubscribed. The developer should make a realistic and substantial financial contribution to the provision of extra school places. There are concerns about the availability of local medical facilities.

Richborough Estates

Obligations

178. The appellants and the Council explained that the obligations referred to in the original report [*OR122-124,187-193*] remain in place. However, the variation to the S106 agreement takes into account the progress that has been made in on the CIL charging scheme. The CIL Charging Schedule was adopted by LCC on 12 November 2014 and it is intended that it will be implemented across Leeds from 6 April 2015. Some of the matters which are covered by the agreement may have been replaced by charges under CIL if permission is granted and by the

[39] Philippa Simpson, Philip Kellett, John Bracken and Jamie Hanley

time that development proceeds. The deed of variation allows for this eventuality.

179. Reference was also made at the inquiry to progress being made on the improvements to Rodley Roundabout. The signalisation scheme had commenced at the time of the reopened inquiry. The Council has obtained a grant following its pinch point bid [*OR53, 122*] but advised that it would still require developer contributions to make up the deficit in funding which has currently been bridged by borrowing. The Council requested that it be given an opportunity to respond fully if there is any suggestion that these contributions would no longer meet the CIL Regulation 122 tests.

Conditions

180. The need to update conditions was discussed following the submission of the bat report 2014. The report recommended mitigation relating to lighting during the construction period and when the development is completed; the timing of works to the junction with Calverley Lane; planting, tree and hedgerow retention; provision of bat boxes; and updated surveys for any trees with bat roosts (potential or confirmed).

181. An updated list of conditions[40] was submitted following the close of the inquiry. The recommended conditions relating to bats cover a mitigation plan, roosting opportunities and lighting design.

Richborough Estates

[40] Document LCC20

Conclusions

The numbers in square brackets [ ] *refer back to earlier paragraphs which are relevant to my conclusions.*

Main Considerations

182. The main considerations arising from the reopened inquiry are:
(1) whether there is now a five year supply of housing land; and,
(2) whether the development would be likely to result in harm to bats as a protected species.

Five Year Housing Land Supply

Requirement

183. The CS has now been found to be sound and the plan to be adopted contains the 'step up' [*IR10*]. There is no dispute that the base requirement for the five year period 1 April 2014 to 31 March 2019 is 20,380 dwellings [*IR21 & 127*]. This differs from what I considered to be the base requirement at the time of the original inquiry when the CS was still under examination and the 'step up' was subject to objections [*OR171-172*].

184. There has been a shortfall in provision against the requirement in both of the full years since the base date of the CS. On the Council's figures for 2012/13 the shortfall was some 1,567 dwellings whereas in 2013/14 it was 775 homes resulting in an under-supply in the first two years of 2,342 units [*IR30 & 127*]. However, these figures include 'completions' from the bringing of empty homes back into use and older persons and student housing. Evidence on completions from these sources was not before me at the original inquiry [*OR173*]. The figure of about 400 completions per year from empties is based on monthly monitoring so is supported by evidence [*IR124*]. However, the inclusion of older persons and student housing is less robust as there is no evidence that existing housing stock has been freed up [*IR31 & 121*]. Whilst some completions should be included from older persons' housing, say about 80 units per year, the evidence is that student accommodation is less likely to have freed up existing housing, given the range of factors set out by the appellants [*IR57*] which apply to an extent to past delivery as well as future supply. On this basis the under supply for the first two years of the CS has been about 2,900 units.

185. With regard to any undersupply in 2011/12, whilst there was 12 months between the preparation of the evidence base (the SHMA) and the base date of the CS, it would seem to me that my original conclusions on what should count towards the backlog hold true [*OR173*]. The backlog fed into the objective assessment of need which included demographic factors.

186. The shortfall should be made up in the next five years in accordance with the Sedgefield approach for the reasons set out in *OR174.* The use of the Sedgefield approach has been reinforced with the publication of the PPG. There is no evidence that LCC has worked with neighbouring authorities [*IR32*]. To spread the shortfall over the first 10 years of the CS as suggested by the Council [*IR94*] would mean that it would be less likely that provision would match identified housing needs for the early years of the CS. Applying the Sedgefield approach

Richborough Estates

would not increase the CS requirement but merely seek to address it within an appropriate timeframe.

187. So far as the buffer required by paragraph 47 of the Framework is concerned I see merit in considering delivery over a relatively long period for Leeds. Such an approach would reflect the guidance in PPG[41] that a local delivery record is likely to be more robust if a longer term view is taken so that peaks and troughs in the market cycle are included. The appellants' suggestion that a period of between 4 and 6 years is appropriate [*IR27*] would take into account primarily a period of recession and recovery from recession rather than a complete market cycle. As noted in my original report delivery exceeded targets until 2008/09 but then dipped due to recessionary and RSS factors [*OR175*]. There has been under delivery in the first two years of the CS. The appellants point to completion rates lagging behind the requirement in the last 10 quarters [*IR35*]. But these factors are a reflection of a period when the country has been emerging from recession. Delivery on city centre, inner area and brownfield sites, which make up a significant proportion of the supply in Leeds, is likely to take longer to respond to encouraging trends in the housing market. However, at the same time permissions on greenfield sites have increased as a proportion of consents [*IR92*]. PPG notes that the factors behind under delivery may vary from place to place[42].

188. On the basis that delivery exceeded targets for the first four of the last 10 years, a persistent under delivery of housing has not been proven, a conclusion which is consistent with that which I came to previously [*OR176*]. This is a judgement based on the particular circumstances in Leeds as put to me at the inquiry. A buffer of 5% should be applied to the five year requirement. The buffer should also be applied to the under supply as to do otherwise would result in some of the CS requirement and the 5% buffer disappearing altogether [*IR29*]. The application of a 5% buffer would not result in the harm from a higher requirement identified in paragraph 24 of the CSIP [*IR87 & 89*].

189. The five year housing requirement comprises about 24,440 dwellings which includes the under supply since April 2012 [*IR184*] made up in this period and the application of a 5% buffer to both the base requirement and the under supply.

Supply

190. The Council's five year figure of 29,504 dwellings [*IR128*] is calculated using a number of sources of supply, notably SHLAA sites, an additional PAS site, windfalls, returns from long term empty properties and prior approval applications enabling changes of use from offices to residential. There is no dispute about the delivery from small windfall sites comprising 500 units per year.

191. A significant proportion of the SHLAA Sites identified to contribute are in the city centre and inner areas of Leeds [*IR49*]. There are questions over the viability of many of these sites and whether a competitive return can be achieved and there are the developers available to bring them forward [*IR51*]. However, to my

[41] Paragraph 035
[42] Paragraph 036

Richborough Estates

mind, supply cannot be approached in a policy vacuum. The strategy of the CS is to require a significant proportion of brownfield development[43] (over 50% for the whole of the plan period) and an appropriate mix of dwelling types, including units for smaller households[44]. In terms of housing distribution almost 50% of housing is planned to take place in the City Centre, Inner Area and East Leeds HMCAs[45]. Allocations and planning permissions will need to reflect this strategy. As a consequence so will the five year land supply. This is in the context of an optimistic growth strategy [*IR97*]. Based on the evidence before me the position in Leeds is different to that in other areas such as Wakefield where there a number of main settlements with adopted allocations and less reliance on development within a MUA [*IR51 & 102*].

192. The volume house builders have rejected a significant proportion of the supply from city centre and inner area sites identified by the Council. In recent years the house builders have not tended to be involved in such sites as they have not fitted their business model [*IR108*]. However, a number of factors are likely to assist supply in these areas. The Council's interventions will bring forward brownfield land [*IR108*]. Some developers are involved in regeneration projects and there is evidence of S106 obligations assisting in this respect [*IR117*]. There are signs that Leeds is going to capitalise on the emerging market for large PRS schemes funded by financial institutions [*IR115*]. There are low cost builders who are active in Leeds and there is no reason why that should not continue [*IR109*], whilst recognising that output from these regional operators is unlikely to increase significantly [*IR50*]. The scheme to open up a south entrance to the railway station will make the Holbeck Urban Village more attractive to developers [*IR113*]. There is good reason to expect the city centre to capitalise upon its attractiveness as a place to live once again [*IR93*].

193. The Council has assessed the viability of a selection of sites in the city centre and inner area and the evidence indicates that a significant proportion of such sites are likely to be viable, albeit not achieving the profit margins sought by the volume house builders [*IR113 & 117*]. The approach taken by the DVS on land values, costs, sale prices and profit has, to my mind, been largely substantiated [*IR112 & 113*]. For these reasons the house builders' and appellants' view of the contribution from these areas is too pessimistic.

194. I note that less than 50% of SHLAA sites have planning permission [*IR42*]. Some are Amber sites [*IR40*]. Others have expired permissions [*IR52*]. However, I am satisfied that the Council has made a reasonable assessment of the likelihood of them coming forward in the short-term, taking into account their promotion by landowners and the Council's knowledge of sites within its area [*IR106*]. It is also appropriate for such sites to be considered within the context of the Core Strategy objectives.

195. There is also a difference between the Council and the appellant in relation to predicted build out rates. Even on sites in high demand areas such as the Golden Triangle there are a limited number of outlets and a tendency to concentrate on family houses rather than smaller units [*IR120*]. For example at Kirkstall Forge

Richborough Estates

[43] Policy H1
[44] Policy H4
[45] Spatial Policy 7

family homes are to be built first even though more than 75% of the development is to be flats. Build rates may be limited so that the flow of properties onto the market allows prices and profit levels to be maintained [*IR119*]. There is also some reflection of their business model in the figures. However, past build out rates and publically stated anticipated rates on some sites indicate a higher output than generally predicted by the house builders [*IR119*]. For the purpose of this exercise build rates should be based on a more optimistic but still realistic delivery than that put forward by the house builders within the policy framework set by the CS.

196. So far as accommodation for older people and students is concerned both sources are difficult to analyse as the CS Monitoring Indicators (11a and 11b) require that new units free up existing stock [*IR56 & 57*]. Moreover, in relation to students the evidence indicates that student growth will massively outstrip supply [*IR57*]. So the SHLAA figures should be adjusted to remove the supply of 895 units for students and an estimated 500 units for older people. With regard to the latter that would still allow some supply from older persons housing of about 400 units.

197. The input of the development industry into the SHLAA process and resultant five year supply is important as recognised by PPG, Planning Advisory Service guidance and the appeal decision in Cheshire East [*IR43*]. The position of the house builders is clearly set out in the Leeds Developer Consortium Report [*IR45*]. I acknowledge the work done by the appellants in their further assessment of the larger sites where there is variance between the house builders and the Council [*IR45*] and the further sense check on some sites [*IR54*]. Although circumstances have changed on some sites which were conceded as being unlikely to come forward at the original inquiry and at previous appeals, the appellants' overall assessment indicates that SHLAA sites will deliver over 10,000 units less than the 2014 SHLAA figure.

198. The SHLAA process for a city such as Leeds is by necessity a broad brush approach given the large number of sites, many of them relatively small in scale. [*IR105]*. Some sites will come into the supply and others will fall away [*IR106*]. The SHLAA is a snapshot in time. There were significant disagreements during the formulation of the 2014 SHLAA which has led to the disparity in the figures put forward by the Council and the appellants. However, it is nigh impossible for an Inspector at appeal to redo the analysis for a city such as Leeds with any accuracy.

199. Therefore, taking into account the policy context and the other factors that I have referred to above, I consider that the published 2014 SHLAA is the best basis for assessing the five year housing supply. In coming to this conclusion I have taken into account the different underlying objectives of the Council and the development industry which underpin their analysis. Given that the CS has only just been adopted and should be given the opportunity to bed down and form the framework for housing supply, the Council's analysis should be preferred. To do otherwise would seriously undermine the chances of the CS being implemented.

200. The additional allowance for the PAS Site not included in the SHLAA appears reasonable as it has obtained planning permission [*IR122*]. Taking into account the size of Leeds and the diversity of its urban area, an additional allowance from large windfalls, based on an analysis of permissions that have come forward

Richborough Estates

outside the SHLAA in the last 2 years is reasonable [*IR122*]. In terms of contribution from prior approvals, although there is a stock of such units, I consider that the Council's estimate of their contribution [*IR123*] is over-optimistic for the reasons given by the appellant, particularly the likelihood that many such applications are likely to be for valuation purposes [*IR60*].

201. Turning to empty homes, an allowance can be included for those long term empties likely to return to the housing stock in accordance with Monitoring Indicator 14 of the CS. The figures provided by the Council about completions from this source are not supported by detailed information [*IR58*] but the Council advised the inquiry that analysis of Council tax records had taken place. I see no reason to dispute that this was the basis for the figures and can understand the sensitivities over this material. That said it is unlikely that all long term empties (2,000) will return to the stock within five years so I consider that the appellants' suggestion that 1,000 units would arise from this source is reasonable [*IR65*].

202. Therefore, I consider that an overall supply figure of about 26,500 homes would be reasonable taking into account the Council's figure adjusted to remove some empty homes and older persons housing and the totality of the contribution from prior approvals and student housing.

Conclusions on housing land supply

203. The supply of some 26,500 homes exceeds the requirement by just over 2,000 units. Therefore, the evidence indicates that a five year housing supply can be demonstrated. The supply figure also allows flexibility on top of the 5% buffer so some under delivery on city centre and inner area sites and lower build rates on prime sites such as Kirkstall Forge would not necessarily be fatal to the delivery of sufficient new homes.

204. This conclusion differs from that arrived at in the original report [*OR180*] and that can be explained by the adoption of the CS with its step up; and the presentation of evidence on completions since April 2012, city centre/inner area viability, regeneration, empties and other sources of supply.

Ecology

205. Surveys and assessments provided since the original inquiry indicate that bats are more prevalent on the appeal site than first thought. There is now evidence that the site is used for roosting and by some of the rarer bat species [*IR133*].

206. The BCT Guidelines need to be applied with expert judgement. But the layperson should be confident that they should generally be followed to ensure that the process is transparent and robust. The information available, particularly that relating to potential hibernacula [*IR137*] and roosts close to commuting routes [*IR138*] suggests that the site should be attributed a 'medium value' as indicators (5), (6), (7) and (12) in Table 4.2 of the 2012 guidelines apply [*IR139*]. The extent of surveys does not follow the recommendations for a medium value site [*IR142*]. There are also potentially issues with the number of surveyors used for those trees likely to be affected by arboricultural work [*IR143*]. So as a result the importance of, for example, the roost in Tree 21 may have been undervalued.

207. That said the application is in outline. No trees are shown to be removed as a result of the access works onto Calverley Lane, the only part of the proposal that has been detailed thus far [*IR68*]. There may be tensions between the

Richborough Estates

recommendations for arboricultural work and the need to retain trees that have known roosts or the potential for such roosts [*IR147*]. The detailed layout proposals have the potential to affect existing trees. However, there would be a strong presumption that the detailed scheme and arboricultural works would be drawn up so that protected species would not be affected by the development [*IR145*]. Conditions can be imposed at this outline stage to ensure that further survey work is undertaken, consistent with a medium value site and bat mitigation is put in place *[IR70]*. With these safeguards and on the basis of the scheme as it stands the proposals would not cause deliberate disturbance of bats or the destruction or deterioration in their breeding or resting places and therefore a licence would not be required. Therefore, it is not necessary to consider the derogation tests [*IR146 & 148*].

208. Consent has been given for the removal of the three trees on the appeal site felled since 2011 [*IR9*]. Therefore, these works are not within the jurisdiction of the SoS.

209. In conclusion the development would be unlikely to result in harm to bats as a protected species subject to the imposition of suitable conditions. This case is different to the Upton on Severn appeal [*IR144*] where full planning permission was sought and Category 1 veteran trees were in close proximity to the proposed dwellings. In arriving at this conclusion I have had regard to the SOCG on ecology agreed between the Council and appellants [*IR4*].

Other Issues

210. Reference was made by interested parties to issues such as highway infrastructure, school provision, health services and public transport at the reopened inquiry. However, it is not within my remit to revisit these issues in this supplementary report [*IR2*]. Moreover, the appellants were not asked to present evidence on these matters and were, therefore, not in a position to counter the information. The original report can be relied upon for these issues as circumstances do not appear to have materially changed save for two matters.

211. In relation to the update on works at Rodley Roundabout this is a matter that is addressed through the obligations [*IR179*]. So far as the loss of a bus service is concerned [*IR177*] this does not affect my finding about deficiencies in public transport [*OR145*].

Obligations

212. I support the reason for the variation in the S106 agreement, based on the emergence of firm proposals for a CIL Charging Schedule, including a timetable for its implementation [*IR178*]. In all likelihood CIL would be in place should the development proceed and would replace some of the S106 obligations.

213. The development would impact on Rodley Roundabout. The funding package for the signalisation scheme was on the basis that nearby developments, including the appeal scheme, would contribute *[OR189]*. The fact that the signalisation scheme has now been partially funded by grant and is going ahead does not, in my view, make the developer contribution unnecessary or unrelated to the development. The tests within CIL Regulation 122 are still met and the conditions set out in Paragraph 3.2.2. of the agreement are satisfied. If the SoS

Richborough Estates

takes a different view he should revert to the parties so that they have further opportunity to comment [*IR179*].

Conditions

214. I consider that there is a need to update the recommended conditions following the submission of further information on bats. All of the conditions referred to [*IR180 & 181*] are necessary to safeguard the protected species. Appendix D contains recommended conditions to substitute those contained under the sub-heading *Biodiversity* in Appendix D to the original report. I have amended those submitted by the Council for clarity without changing the substance.

Overall Conclusions

215. The proposal remains contrary to Leeds UDP Policy N34 which is still a 'saved' policy post adoption of the CS. There are adverse impacts on local character and identity, including less than substantial harm to the setting of the Farsley Conservation Area [*OR201*]. The development is not fully compliant with the PAS Interim Policy [*OR198*]. Permission would undermine the plan-led system promoted by the Framework [*OR203*]. The other impacts, including on bats, could be made acceptable by the use of conditions or through mitigation contained within the obligations.

216. I have concluded that there is now a five year supply of housing which is a significant change in circumstances since the original report. As a result paragraph 49 of the Framework does not take effect and relevant policies for the supply of housing can be considered up-to-date. Given that Spatial Policies 6 and 7 and Policies H1 and H4 of the CS have recently been found sound and have only just been adopted it is unsurprising that they should be considered up-to-date.

217. So far as Policy N34 of the UDP is concerned I concluded previously that it was a policy for the supply of housing [*OR200*]. In the light of the present circumstances it can also be considered up-to-date. In this respect the UDP has a plan period of 1998 to 2016 [*OR18*] so is not time expired. It is noteworthy that in the explanation to Policy N34, PAS land will be reviewed as part of the preparation of the LDF [*OR17*]. This is consistent with paragraph 85 of the Framework which states that permission for permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development.

218. The SAP will be published in 2015 and will undertake this review having regard to the CS, including in particular Spatial Policies 6 and 7 and Policies H1 and H4. As part of this review the relative sustainability of potential sites will be assessed [*IR23 & 91*]. The fact that the Council has applied Policy N34 flexibly through the interim policy so that land has been released in advance of a Local Plan review does not make it out-of-date in the context of paragraphs 14 and 49 of the Framework. More, it reflects a pragmatic approach by LCC.

219. The test within paragraph 14 of the Framework in relation to planning permission being granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits does not now come into play. It is a matter of balancing the harm, conflict with the development plan and adverse impacts on local character and identity, against the benefits, primarily the contribution to

Richborough Estates

housing provision, including affordable homes [*OR199*]. As with the original report the prematurity argument in relation to the SAP [*OR202*] is not a significant factor in the planning balance. The publication of PPG has not materially altered this position [*IR15*].

220. Development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. I conclude that the conflict with the development plan, the starting point for decision making, and the adverse impacts on local character and identity are sufficient to outweigh the benefits of additional housing, including affordable homes. The presumption in favour of sustainable development does not apply as the proposal does not accord with the development plan.

Recommendation

221. I recommend that the appeal be dismissed and outline planning permission be refused. This recommendation supersedes that contained in my original report [*OR205*].

222. If the Secretary of State is minded to disagree with the recommendation, Appendix D to the original report lists the conditions that should be attached to any permission granted, other than conditions 15) to 19) which are replaced by conditions 1) to 6) set out in Appendix D of this report.

Mark Dakeyne

INSPECTOR

Richborough Estates

APPENDIX A - APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Nathalie Lieven:	Of Queens Counsel, instructed by the Council's Solicitor
She called	
Martin Elliot MA (Hons) MA MRTPI	Team Leader
Adam Brannen BA (Hons) MA	Head of Regeneration
David Newham MRICS	DVS

FOR THE APPELLANT:

Richard Sagar	Solicitor, instructed by ID Planning Limited
He called	
Dr Mark Webb BSc (Hons) PhD CEcol CEnv MCIEEM	Technical Director WSP
Philip Roebuck FRICS	Director, DTZ
Jonathan Dunbavin BSc MCD MRTPI	Director, ID Planning Limited

FOR THE RULE 6 PARTY, FARSLEY RESIDENTS ACTION GROUP (FRAG):

Mark Joslin
Caroline Gibson

INTERESTED PERSONS:

Rodney Cam	Local Resident
Stuart Andrew	Local MP
John Bracken	Prospective Leeds City Councillor
Jamie Hanley	Prospective Local MP
Andrew Carter	Ward Councillor, Calverley and Farsley Ward
Rod Wood	Ward Councillor, Calverley and Farsley Ward
Chris Levi	Local Resident
Amanda Carter	Local Resident
Philippa Simpson BSc (Hons) Dip TRP MRTPI (rtd)	Local Resident
Malcolm Levi	Local Resident

Richborough Estates

APPENDIX B: PLANS AND DOCUMENTS IN CONNECTION WITH THE REOPENED INQUIRY

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

CORE DOCUMENTS

CD46 Leeds SHLAA Update 2014 – Main Report and Full Report with detailed site schedules
CD47 Leeds Five Year Supply Schedules
CD48 Report on the Economic Viability of 17 Residential and Mixed Use Development Sites within the Metropolitan Borough of Leeds – DVS – October 2014

GENERAL DOCUMENTS

GEN5 Notification of inquiry arrangements dated 15 October 2014

LPA DOCUMENTS

LPA7 Proof of Evidence of Martin Elliot and 8 appendices
LPA8 Proof of Evidence of Adam Brannen and 1 appendix
LPA9 Rebuttal of aspects of the evidence of Philip Roebuck by Philip Lee and David Newham of the DVS and appendices PRL1 to PRL4
LPA10 Rebuttal Proof of Evidence of Martin Elliot and 3 appendices

APPELLANT'S DOCUMENTS

APP8 Supplementary Proof of Evidence of Jonathan Dunbavin and appendices ID1 to ID19
APP9 Revised ID7 – Leeds Developer Consortium Assessment of Leeds City Council identified Five Year Housing Supply Final Report 9 November 2014
APP10 Proof of Evidence of Philip Roebuck and appendices DTZ1 to DTZ3
APP11 Proof of Evidence of Dr Mark Webb and appendices 1 to 3
APP12 Rebuttal Proof of Evidence of Jonathan Dunbavin and appendices 1 and 2
APP13 Rebuttal Proof of Evidence of Philip Roebuck and appendices DTZ1 to DTZ5

FRAG DOCUMENTS

R6.6 Proof of Evidence and Exhibits 1 to 8 and 10 additional documents
R6.7 Rebuttal of SOCG on Ecology
R6.8 Photographs of Trees 12 and 21

Richborough Estates

DOCUMENTS SUBMITTED AT THE INQUIRY

GENERAL DOCUMENT

ATT2 Attendance Lists for Days 1 to 4

STATEMENT OF COMMON GROUND

SOCG3 Statement of Common Ground agreed by the appellants and LCC relating to ecology

LPA DOCUMENTS

LCC10 Opening Submissions
LCC11 CIL Examination Hearing Session 3 June 2014 – LCC response to Examiner's Questions
LCC12 Extract from PPG on Viability
LCC13 Leeds CS consolidated version November 2014

LCC14 Report on the Economic Viability of 15 Residential and Mixed Use Development Sites within the Metropolitan Borough of Leeds – DVS – May 2014
LCC15 Letter to DCLG from LCC dated 17 March 2014 relating to publication of PPG
LCC16 Additional tables of 5 year supply showing 5% buffer added to shortfall
LCC17 Comparison of GVA EVS Study January 2013 and DVS reports dated May and October 2014
LCC18 Tree Preservation Order dated 10 November 2011 relating to the appeal site

APPELLANTS' DOCUMENTS

TE15 Updated Bat Impact Assessment Report 2014 including Bat Activity and Tree Roost Survey Report dated 27 March 2013
TE16 Opening Submissions
TE17 Letter from LCC dated 9 February 2012 relating to Tree 12
TE18 City Centre Values Comparison Summary Table
TE19 Report to LCC Executive Board dated 19 June 2013 relating to Leeds Rail Growth Package and Kirkstall Forge mixed use development
TE20 Letter to DCLG from ID Planning Ltd relating to publication of PPG
TE21 Supplemental Agreement and Deed of Variation dated 13 November 2014 to S106 dated 13 November 2013 (Document TE11)

FRAG DOCUMENTS

FRAG8 Opening Submissions
FRAG9 Closing Submissions

INTERESTED PARTIES DOCUMENTS

LR5 Statement from Stuart Andrew MP

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

LPA DOCUMENTS

LCC19 Closing Submissions
LCC20 Updated List of Draft Conditions

APPELLANTS' DOCUMENTS

TE22 Closing Submissions

Richborough Estates

APPENDIX C: Abbreviations

BCT	Bat Conservation Trust
CIL	Community Infrastructure Levy
CIEEM	Chartered Institute of Ecology and Environmental Management
CS	Core Strategy
CSIR	Core Strategy Inspector's Report
DCLG	Department of Communities and Local Government
DPD	Development Plan Document
DVS	District Valuer Services
EASEL	East and South East Leeds
EVS	Economic Viability Study
HBF	Home Builders Federation
HCA	Homes and Community Agency
HILS	Housing Investment Land Strategy
HMCA	Housing Market Characteristic Area
LCC	Leeds City Council
LDD	Local Development Document
LDF	Local Development Framework
LPA	Local Planning Authority
LUDP	Leeds Unitary Development Plan 2001
LUDPR	Leeds Unitary Development Plan Review 2006
MUA	Main Urban Area
ONS	Office of National Statistics
PPG	Planning Practice Guidance
PAS	Protected Areas of Search
PRS	Private Rented Sector

Richborough Estates

RSS	The Yorkshire and Humber Plan – Regional Spatial Strategy to 2026
SAP	Site Allocations Plan
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State
SOCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
S106	Section 106 of the Town and Country Planning Act 1990
UDP	Unitary Development Plan
UU	Unilateral undertaking under S106

Richborough Estates

APPENDIX D: Recommended Conditions
(to be substituted for condition nos. 15) to 19) in Appendix D to the original report)

Biodiversity

1) Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) Biodiversity shall be submitted to, and approved in writing by, the local planning authority. The CEMP shall include the following:
i) Risk assessment of potentially damaging construction activities;
ii) Identification of 'biodiversity protection zones' to include trees and hedgerows important to bats;
iii) Measures to avoid or reduce impacts during construction, including protection of any watercourses on or adjacent to the site from physical disturbance and chemical pollution;
iv) Measures to avoid spreading invasive species;
v) Location and timings of sensitive works to avoid harm to biodiversity features, including nesting birds and commuting, foraging and roosting bats;
vi) The times during construction when ecologists need to be present on site to oversee works;
vii) Responsible persons and lines of communication; and,
viii) Use of protective fences, exclusion barriers and warning signs
The approved CEMP shall be adhered to and implemented throughout the construction period.

2) Prior to the commencement of development a Bat Mitigation Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall be informed by further presence/absence surveys of all trees identified as having 'moderate/low or high' bat roost potential in page 1 of the Tree Inspection and Bat Activity Survey Report dated October 2011 (WSP). The further surveys shall be undertaken within one year of the submission of the Bat Mitigation Plan to the local planning authority. The Plan shall be implemented in accordance with the approved details and timetable.

3) Prior to the commencement of development a Biodiversity Protection and Enhancement Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include details of the protection of tree and hedgerow habitats together with any wildflower seeding of proposed SUDS areas, enhancements along the beck, and planting across the site to benefit wildlife. The Plan shall include objectives to benefit biodiversity and a maintenance schedule of how the features will be managed on an annual basis, together with details of who shall carry out the maintenance. The Plan shall thereafter be implemented in accordance with the approved details and timetable.

4) Prior to the commencement of development, details of bat roosting and bird nesting opportunities (for species such as house sparrow, starling, swift, swallow and house martin) to be provided within buildings and

Richborough Estates

elsewhere on-site shall be submitted to, and approved in writing by the local planning authority. The details shall show the number and specification of the bird nesting and bat roosting features and where they shall be located and a timetable for implementation. The details shall be carried out in accordance with the approved details and timetable and thereafter retained.

5) Prior to the commencement of the development a Lighting Design Strategy for Bats shall be produced by an appropriately qualified ecological consultant and submitted to, and approved in writing by, the local planning authority. The strategy shall include lighting design for both the construction phase and for the completed development and shall:
i) identify those areas and features on site using appropriately scaled plans that are sensitive to commuting, foraging and roosting bats;
ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb commuting, foraging and roosting bats;
iii) shall take into account the mitigation measures set out in paragraphs 4.2.7 to 4.2.9, 4.2.19 to 4.2.22 and 4.3.5 to 4.3.8 of the Updated Bat Impact Assessment Report 2014 dated 2 June 2014 (WSP).
All external lighting shall be installed in accordance with the specifications and locations set out in the Strategy and shall be maintained thereafter in accordance with the Strategy. No other external lighting shall be installed in the areas identified as sensitive to commuting, foraging and roosting bats.

6) Prior to the commencement of development a Method Statement for the control and eradication of Japanese Knotweed and Himalayan Balsam shall be submitted to, and approved in writing by, the local planning authority. The Method Statement shall thereafter be implemented as approved.

Richborough Estates

Department for Communities and Local Government

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.

Richborough Estates

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.