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## Appeal Decision

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

Site visits made on 4 and 26 February 2015.

**by Geoffrey Hill BSc DipTP MRTPI**

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

**Decision date: 20 May 2015**

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**Appeal Ref: APP/F0114/A/14/2214596**

**Land at Abbotts Farm Close, Paulton, BS39 7TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Edward Ware Homes Ltd., against the decision of Bath & North East Somerset Council.
  - The application Ref 13/03547/OUT, dated 16 August 2013, was refused by notice dated 22 January 2014.
  - The development proposed is described as "outline planning permission for residential development of up to 47 dwellings and associated infrastructure".
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### Decision

1. The appeal is dismissed.

### Applications for Costs

2. At the inquiry an application for costs was made by the Appellants against Bath and North East Somerset Council, and an application was made by Bath and North East Somerset Council against the Appellants. These applications are the subject of separate Decisions.

### Preliminary Matter

3. The appeal is in respect of an application for outline planning permission with all matters except access reserved for subsequent consideration.

### Main Issues

4. There are two main issues in this appeal.
  1. Whether there is a 5-year housing land supply available in the Housing Market Area, and how that may bear upon the relevance of development plan policies affecting the directions for growth and the release of housing sites.
  2. Whether the proposed development would represent unsustainable development, having regard to the capacity at the local primary school and the possible consequence of otherwise unnecessary journeys by private cars to schools elsewhere.

## Reasons

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

5. Policy DW1 of the recently adopted Bath and North East Somerset Core Strategy (CS) sets the need for 13,000 homes over the plan period (2011-2019). Because of previous under-delivery of housing in the housing market area, the CS accepts that, for the first five years of the plan's period, housing land supply requirements have to be increased by 20% in order to comply with paragraph 47 of National Planning Policy Framework (NPPF) which looks for a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
6. For reasons explained in the supporting justification for Policy DW1, the distribution of housing sites across the district is divided between five Policy Areas. The justification for this is that Bath is seen to be the primary focus for new development, that a balance should be achieved in the Somer Valley Policy Area between jobs and houses so as to minimise the need for out-commuting from communities in the valley, and to permit sufficient housing in the Rural Areas so as to meet local needs in the main settlements. That is, for reasons of supporting a sustainable pattern of development, the CS is based upon a strong rationale for directing growth at appropriate levels or proportions into the various Policy Areas.
7. At the inquiry the Council put forward the latest iteration of its Strategic Housing Land Availability Assessment (SHLAA) to support the contention that there is a supply of housing land which meets the expectations of the CS. The Appellants brought forward evidence to challenge the robustness of the SHLAA, and sought to argue that, because some sites may not be available, or that the delivery of some sites may only come forward at a slower pace than that envisaged in the SHLAA, the Council cannot demonstrate that there is a full 5-year supply in accordance with the expectations of the CS.
8. I note that the appeal was lodged before the CS was adopted, at a time when the land supply position may have been uncertain. However, in June 2014 the Inspector conducting the Examination into the CS found that, on the evidence available to him, the Council did have a land supply which would meet the expectations of the CS and that the plan could be found sound. The CS was subsequently adopted 10 July 2014. However, even before the plan had been formally adopted, The Planning Inspectorate had agreed to co-join this appeal with two others, on the basis that they all included a challenge as to whether there was a 5-year supply of housing land.
9. It was argued at the inquiry that persisting with the appeal was unreasonable; that an Inspector had heard evidence at the Examination and had concluded that there was a 5-year land supply. In which case there was no substance to this aspect of the Appellants' arguments. On the face of it, I appreciate that it must have been enormously frustrating for the Council, having only just received an endorsement from a Planning Inspector that it had a 5-year land supply, to immediately be placed in a position to have to defend that in detail at a Section 78 planning appeal inquiry. However, the Appellants are entitled to make a planning application and to take the case to appeal if they consider the refusal of planning permission to be unwarranted.

10. Paragraph 47 of NPPF implies that the supply situation may only have to be reviewed on an annual basis. Since the close of the inquiry Planning Practice Guidance (PPG) has been revised to add weight to that view<sup>1</sup>. However, neither NPPF nor the PPG suggests that the supply figures cannot be challenged or reviewed at any time. Indeed, paragraph 3-030-20140306 of PPG advises that it is necessary to have an identified 5-year housing land supply at all points during the plan period. Whilst I would not attempt to challenge the credibility of what was discussed at the CS Examination, it is not unreasonable for the Appellants to seek to ensure that the information is up to date and that the expectations of the NPPF and PPG can be met.
11. At the inquiry the Council effectively acknowledged weaknesses in the land supply position presented at the local plan Examination by presenting a new version of the SHLAA. Furthermore, the Council accepted that not all of the sites it has listed in the latest version of the SHLAA would come forward as shown. Some sites may not come forward at all because of difficulties in achieving access, other sites have changed ownership, and the delivery of some sites may be slower than expected on account of the time taken to get full planning permission, or because of delays incurred in transferring ownership to active housing developers.
12. I do not propose to go through in detail the trajectory assumed by the Council for all of the sites queried by the Appellants at the inquiry. For the purposes of this appeal I consider it is sufficient only to note that the Council conceded that the numbers of sites which might come forward should be reduced by 538, bringing the supply figure down from 5,945 to 5,407. I acknowledge that the figure may also be further reduced if some, or all, of the potential problems identified by the Appellants on other sites across the District were to materialise. Indeed, the Appellants put forward the view that the overall supply may be as low as 4,589, compared the Council's original contention that the supply figure is as high as 5,945.
13. However, those figures are for housing land supply across the District as a whole. At the inquiry it was agreed by the witnesses for the Council and for the Appellants that, for the reasons discussed at paragraph 6 above, it is reasonable to consider the distribution of those figures against the apportionment between the Policy Areas set out in Policy DW1. Of the 13,000 houses required over the plan period, Policy DW1 apportions 7,020 to Bath (54%), 2,150 to Keynsham (16.5%), 2,471 to Somer Valley (19%), 1,120 to Rural Areas (8.5%) and 200 to the Whitchurch fringe of Bristol (1.5%).

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<sup>1</sup> Planning Practice Guidance ID 3-033-20150317

14. Translating these into annualised figures over 18 years gives:

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

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

15. This annual need figure then has to be multiplied up to give a 5-year need figure, and to which has to be added a proportion of the agreed back-log (608) to give an adjusted 5-year need, which itself has to be increased by 20% to provide the buffer looked for by paragraph 47 of NPPF and acknowledged in the CS. This results in the supply figure which is shown in Table 2 below:

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

<b>Policy Area</b>	<b>Annual need</b>	<b>x 5 yrs</b>	<b>+ % of backlog*</b>	<b>Basic 5 year need</b>	<b>+20%</b>	<b>Supply figure</b>
Bath	390	1,950	329	2,279	456	2,734
Keynsham	120	600	101	701	140	814
Somer Valley	137	685	115	800	160	960
Rural Areas	62	310	53	363	72	436
Whitchurch	11	55	10	65	13	78
<b>TOTALS</b>	<b>722</b>	<b>3,600</b>	<b>608</b>	<b>4,208</b>	<b>841</b>	<b>5,022</b>

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

16. Taking the supply figure and setting this against the Council's SHLAA figure for each Policy Area, as given in Table 15 of Mr Harbottle's evidence, and adjusted to take account of the concessions made at the inquiry (as set out in Inquiry Document EWH 12) gives the distribution set out below:

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

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

17. Table 3 shows that, using the figures for land supply (adjusted as *per* concessions made at the inquiry) all of the Policy Areas except Bath can demonstrate more than a 5-year supply of housing land. The overall position is that there is 5.38 year's supply across the District. Therefore, on the basis of the concession figures accepted at the inquiry and having regard to the advice given at paragraph 49 of NPPF, because the Council can demonstrate a 5-year supply of deliverable housing sites, it is not appropriate to consider that the relevant policies for the supply of housing are out of date.
18. I acknowledge that preparing the SHLAA is not an exact science, and that it relies upon assumptions and predictions that may only be a 'best guess' at the time it is drawn up. The SHLAA which was presented at this inquiry had seemingly not been open to testing at Examination, nor had it been independently reviewed. In which case, it is not possible to be fully confident that it presents a robust trajectory, based on up-to-date and sound evidence, as envisaged at paragraph 3-033 of PPG. In any event, as acknowledged above, circumstances change and the likely supply assumptions can change almost unpredictably as new sites come forward and resolving problems on other sites may become either easier or more difficult. In which case, and without the benefit of a wider discussion involving more of the stakeholders who have a role in the housing market area about the assumptions and conclusions of the SHLAA, I acknowledge that it may not be realistic to conclude authoritatively that the figures given in Table 3 above are determinative.
19. Taking the (arguably) more pessimistic view set out by the Appellants in Mr Harbottle's evidence, even if there is an overall District-wide shortfall in housing land supply, the situation remains that there is an excess of supply in four of the five Policy Areas, with only Bath showing a significant shortfall. This scenario is set out in Table 4 below.

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

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

20. Some of the doubts raised by Mr Harbottle over progress on two of the MoD sites in Bath (Warminster Road and Foxhill) may be overly pessimistic in view of the recent decisions made by the Council to grant planning permission (see Documents EWH 13 and BANES 07). But this may be countered – at least in part - by the fact that Paulton House in Midsomer Norton is currently being marketed for offices rather than for conversion into flats, and therefore the 58 units envisaged there in the SHLAA may not come forward.
21. The argument then remains, if the situation is as set in Table 4 with an overall shortfall in housing land supply, paragraph 49 of NPPF says that the policies for the supply of housing should not be considered up to date. If this were the situation, then the circumstances set out at the fourth bullet point of paragraph 14 of NPPF are brought into play. This requires that planning permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole”.
22. Even if the scenario set out at Table 4 were to be corroborated by means of a wider discussion which involved more of the relevant stakeholders, and that there is indeed an overall shortfall, then in order to make up that shortfall the question arises of whether it is appropriate to grant planning permissions (which might be otherwise acceptable in all other respects) to address that shortfall in locations which could skew the concept of a sustainable distribution of growth which is embodied in Policy DW1.
23. Paragraph 17 of NPPF sets out the core planning principles. The first of these is that planning should be genuinely plan-led. In the circumstances of this appeal I see this as being of paramount importance. The Core Strategy was adopted less than a year ago and it would be overly critical – if not churlish – to so quickly regard such a recently adopted document as being irrelevant. As noted at paragraph 6 above there are rational reasons supporting the principle set out in Policy DW1 to promote a sustainable distribution of development across the District for housing land supply, divided amongst the five Policy Areas.
24. For the purposes of this appeal – which relates to a site in the Somer Valley Policy Area - the figures given in both Table 3 and Table 4 show that there is

more than a 5-year supply of housing land in the Somer Valley Policy Area. That is, on the face of it, there is no urgent necessity to increase the supply of housing land in the Policy Area.

25. The proposed schemes for 47 dwellings at Paulton would bring the total number of planned or committed sites on the trajectory for Somer Valley to something in the order of 2,436 on the Appellants' evidence, or 2,687 on the Council's evidence. I acknowledge that the 2,471 figure given in Policy DW1 is not a cap, and that it is an indicative "about" figure, suggesting that variations above or below that figure would be compliant with the policy. 2,687 would be 216 above the indicative figure – or a 9% excess: 2,436 would be 35 below the 2,471 figure – or a 1% shortfall.
26. In principle, an excess of perhaps up to 10% might not unduly skew the overall target in the Policy Area, but these figures are for the supply over the whole of the plan period. If the appeal scheme was to be permitted, and using Mr Harbottle's figures, this would bring the proportion available at the moment up to 1,343 in Somer Valley – just about 54% of the indicative 18-year allocation. But this would be within the first eight years of the plan period (2011-2019). Allowing for the fact that the 20% buffer (160) which has been brought forward into the current 5-year land supply should be subtracted from the supply for the remainder of the period<sup>2</sup>, this would leave only 967 of the plan's 18-year requirement to meet the needs of the last 10 years of the plan.
27. This would mean that more than half of the indicative allocations would have been committed within the first 8 years (44%) of the plan period. Subject to the disagreements over individual sites noted in the SHLAA, nothing was put forward at the inquiry to demonstrate that the current commitments would not, or could not, be completed. This would mean that within the policy area the rate of growth would be significantly biased towards the beginning of the plan period. If all permissions were to be built-out then this could lead to the situation where greater restraints may have to be applied towards the end of the plan period, leaving the plan potentially unable to respond appropriately to future – and as yet unforeseen – needs. That would not be consistent with the plan > monitor > manage principle underlying the local plan system.
28. More to the point, the corollary of allowing a greater proportion of housing development in the Somer Valley solely to make up the possible overall shortfall across the District, would undermine or dilute the strategy of directing the main initiatives for growth to Bath and accommodating a smaller proportion of additional housing in the other Policy Areas – where some degree of limitation or restraint is seen to be appropriate for reasons of achieving a balanced, sustainable growth strategy.
29. That is, even if the housing supply situation is as set out at Table 4 above, I do not consider that permitting additional development in Somer Valley at this time would be compliant with the core principle of NPPF which looks for a planned planning system. This is a principle which carries great weight. With it being less than a year since the CS was adopted, I consider it is far too early to accept that its policies for apportioning and distributing growth are out of date and that it would be contrary to the NPPF first core planning principle to permit a dilution of its strategy so early in the plan period by diverting

<sup>2</sup> See NPPF paragraph 47 on how to factor in the 20% buffer across the plan period.

pressure away from the Bath Policy Area. I acknowledge that information which has become available since the adoption of the CS suggests that it does not fully sit comfortably within the expectations of paragraph 49 of NPPF, but it is not the overall strategy which is out of date, it is the assumed delivery rates or the 'fit' with the sites identified in the SHLAA which are in need of up-dating. But for the strategy to remain relevant and credible this would have to be addressed within the Bath Policy Area – not across the plan area as a whole.

30. Drawing these points together on the first main issue, from the evidence heard at this inquiry I consider that the SHLAA figures initially presented by the Council do not give a robust, reliable indication of the amount of planned or committed housing across the District. On the other hand, I am inclined to the view that the figures presented by the Appellants are likely to be too pessimistic. However, the Appellants' comments on many of the SHLAA sites suggest that, even with the Council's concessions, there have to be continuing doubts over the trajectory presented by the Council. Nevertheless, in both of the situations shown in Tables 3 and 4 above there is more than a 5-year supply of housing land in all of the Policy Areas except Bath. It being so early in the plan period I do not consider that it is correct to allow additional development outside the Bath Policy Area because the consequence of this would lead to distortion of the sustainability balance embodied in the principal component of the CS's strategy. That is, it would not be in accordance with the core planning principles of NPPF to accept that the shortfall in housing land supply in the Bath Policy Area automatically justifies permitting additional development elsewhere across the District, and particularly in locations where there may be other cogent objections on grounds of sustainability.
31. In terms of the policy set out at paragraph 14 of NPPF, I come to the view that permitting significant growth in excess of the current land supply situation in the Policy Areas outside Bath would undermine the principles of sustainable development set out in the CS. To do that so early after the adoption of the CS would significantly harm the value and purpose of the detailed, lengthy and collaborative plan-making process which has taken account of the views of local people in wishing to shape their surroundings. This would undermine confidence in the plan-making process, which constitutes an adverse impact that would significantly and demonstrably outweigh the benefits of topping up the housing supply by permitting further development in the Somer Valley.

***Whether the proposed development would represent unsustainable development, having regard to the capacity at the local primary school and the possible consequence of otherwise unnecessary journeys by private cars to schools elsewhere.***

32. The Council's sole reason for refusal for this development is that the additional population would exceed the anticipated capacity of the local primary school and that this would result in children from Paulton having to be transported to schools in neighbouring villages.
33. The calculation of school capacity is somewhat theoretical, in that demographic projections are applied to the anticipated population of a settlement, and the numbers of children in each school age group is calculated. This cannot be a precise forecast: numerous variations in the make-up of the growth of the resident and incoming population mean that the prediction can only be an estimate. Also, individual families may choose to send their children to schools



other than the local village school, or even choose to have children educated at home. Nevertheless, the practice of predicting or forecasting the likely demand for school places is well established and no serious challenge to the methodology used by the Council was put forward at the inquiry.

34. The Council refers to BANESLP Policy CF3 in its reason for refusal. This policy requires that where it is found that existing community facilities would be inadequate then additional provision should be made. Notwithstanding the caveats discussed above, the appellants have accepted that provision may need to be made to transport primary school age children elsewhere and have undertaken to fund transport from the village to other schools for a period of seven years. On the face of it, this would satisfy Policy CF3.
35. Paulton is a settlement where there has been, or is planned to be, a significant amount of housing growth. The village primary school has works in hand which will expand its capacity to 630 places. However, because of the restricted site, there is no opportunity for further expansion. Neither are there plans in place to build an additional school in the village.
36. The appeal scheme for 47 dwellings is predicted to generate a demand for 14.57 pupils – perhaps 14 or 15 places in reality. The timing of completion of the appeal scheme set against the completion of committed and planned development elsewhere in the village may mean that children from houses on the appeal site would be able to take up places in the school in Paulton, but the knock-on effect would be that children from elsewhere in the village would have to be taken to schools elsewhere.
37. There is capacity in schools in neighbouring villages, with the ones most likely to receive pupils from Paulton being at Cameley and at Clutton. Cameley school is 4 kilometres from the appeal site and Clutton 4.4 kilometres. Allowing for the possibility that it may be children from other parts of the village that would need to be accommodated in the neighbouring village schools, these distances could be increased by perhaps a kilometre to 5.5 and 5 kilometres respectively. These are more than the statutory maximum of 2 miles (3.22 kilometres) walking distance for primary school age pupils. Also, the majority of the route distance is *via* relatively narrow and unlit country lanes without footways. That is, they are not seen to be either acceptable or safe walking routes for children of primary school age and it will be necessary for the children to be taken by some form of transport.
38. I acknowledge that similar arrangements have been accepted in the past – including at the planning appeal for a site in Peasedown St John. However, that decision was taken in the context of it being found that there was not a 5-year housing land supply and the priority was to identify sites for housing. The acceptance of transporting pupils to nearby villages was therefore taken as a means of addressing the shortage of housing land, but it was not necessarily seen to be a desirable circumstance, or one that represented a precedent, subject to all other considerations.
39. In this appeal, I have come to the view that there is a demonstrable 5-year supply of housing land in the Somer Valley (see paragraphs 5-31 above). In which case, there is no overriding need to release the appeal site for housing development, and greater consideration can be given to how the proposed scheme might impinge upon the principles of sustainable development.

40. Paragraph 7 of NPPF sets out three roles of sustainable development; one of which is a social role. This is seen to be represented by strong, vibrant and healthy communities with a housing stock commensurate with its needs and with access to local services. This is carried further forward in paragraph 70 which looks for an integrated approach to the location of housing, economic uses and community facilities and services. That is, there is an expectation that sustainable development is represented by communities which are, as far as possible, self-sufficient or self-contained. Section 3 of NPPF supports this by expecting that the need to travel will be minimised for (amongst other matters) education. The Council's reason for refusal also cites policy T.1. This policy is a general encouragement for the development of balanced communities such that there would be – amongst other matters – a reduced need for travel.
41. The idea of a balanced, self-contained community is, perhaps, an idealised goal and I acknowledge that for work purposes at least, there is likely to be a significant level of out-commuting from settlements in the Somer Valley, including Paulton – and much of that is likely to be by car. However, whilst that may be an unavoidable circumstance, this is not to be taken as acceptance or even approval of travel which might otherwise be avoidable. The imbalance of jobs to housing in the Somer Valley has to be regarded as a negative circumstance in terms of sustainability. Even if the children are taken in organised bus transport – as proposed to be provided by the Appellants – these would be journeys which could be avoided if the houses are not built. After the seven year period to be supported by the Appellants, it is likely that such journeys would transfer to private cars or require the bus journeys to be supported thereafter from the public purse.
42. At the inquiry the Council accepted that, on highway safety and highway capacity grounds, it no longer relied upon Policy T.1. Nevertheless, it is my view that, in relying upon regular transport to schools elsewhere (either as a direct or indirect consequence of the development), the proposed scheme would not represent sustainable development as discussed at paragraph 30 of NPPF, in that the trips would – albeit to a relatively small degree – unnecessarily add to greenhouse gas emissions.
43. At the inquiry arguments were also put forward that children attending school outside Paulton – and perhaps also their families – may not feel properly integrated within the community life of the village. To a large degree this can only be surmise and no firm evidence was brought forward to categorically demonstrate this. However, I recognise that this would be a possibility and, were this to happen, it would not be in accordance with NPPF's expectations for balanced communities, reliant upon local (which I interpret to mean within the village) access to facilities and services.
44. Concerns were expressed over the safety of the proposed access, with particular regard to its proximity to the crest of the hill in Farrington Road and the recently installed width restriction at the entrance to the village at this point. Although I do not disregard these concerns, no technical evidence was brought to the inquiry to support the contention that the access would be unsafe and no objections have been raised by the local highway authority. I also acknowledge that there are no objections on landscape grounds nor in relation to the impact on the character and appearance of the area, nor in

respect of possible harmful impact on the occupants of the neighbouring houses.

45. If there were an overriding need for further housing land in Paulton these would be factors which would weigh in favour of granting permission. As too would the proportion of affordable housing being promoted through the appeal scheme. However, there is a demonstrable 5-year supply of housing land in the Somer Valley, and the scheme would conflict with the social and economic (ie low carbon, minimum transport) roles of sustainable development given in NPPF. On balance, the proposed scheme would not represent sustainable development and the appeal should be dismissed.

### **Conditions and Section 106 Obligations.**

46. Suggested planning conditions were discussed at the inquiry. Were the appeal to be allowed I consider that, subject to minor rewording, the draft conditions would meet the tests given at paragraph 206 of NPPF. However, as the appeal is to be dismissed it is not necessary for me to go through the suggested conditions to explain why it would have been necessary to have attached them to a permission.
47. Similarly, a completed planning obligation in the form of a Unilateral Undertaking made under Section 106 of the Town and Country Planning Act was submitted. Apart from one of the offered contributions, the submitted obligation meets the three tests given at paragraph 204 of NPPF. The one contribution which does not meet the tests is the undertaking by the developer to pay the Council's costs of monitoring the implementation of each of the deeds. A contribution of this kind was found to be unlawful by the High Court and, on the face of it, the circumstances appear to be similar in this appeal<sup>3</sup>.
48. However, the submitted obligation includes a 'blue pencil' clause (Clause 9) which provides that, should any of the payments be seen to be incompatible with the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations (CIL Regulations), then that invalidity should not affect the enforceability of the remaining provisions of the deed. That is, should the appeal be allowed, I am satisfied that, subject to striking out the requirement to pay the Council's monitoring costs, the obligation would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
49. Since the close of the inquiry it has been brought to my attention that the Council has adopted a Community Infrastructure Levy Charging Schedule (CIL Levy) which would come into effect on 6 April 2015. If the decision in this appeal were to be issued after that date then several matters which are included in the Section 106 planning obligations would be duplicated by the CIL Levy. To endorse payments in a Section 106 obligation which would also be payable under the CIL Levy would be contrary to Regulation 122. However, in view of the fact that the appeal is to be dismissed it is not necessary for me to go on to specify which elements of the Section 106 planning obligation needs to be struck out in order to comply with the CIL Regulations.

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<sup>3</sup> Oxfordshire County Council v Secretary of State for Communities and Local Government, Cala Management Limited, William Roger Freeman, Ross William Freeman, Julian James Freeman, Cherwell District Council: [2015] EWHC 186 (Admin).

50. Nevertheless, what is offered in the planning obligation, or which would be required under the Council's CIL Levy, does not overcome the objections to the scheme as discussed in detail above.

### **Overall Conclusions**

51. I have come to the conclusion that there is a shortfall in the 5-year housing land supply in the Housing Market Area, and therefore the expectations set out at paragraph 49 of NPPF come into play. However, for rational reasons of promoting sustainable development, the Housing Market Area requirement given in the CS is distributed across five Policy Areas and it is only in the Bath Policy Area that there is a shortfall in supply; in the Policy Area relevant in this appeal (Somer Valley) there is more than a 5-year supply of developable housing land. Despite the shortfall in the Bath Policy Area, I do not consider that the CS can be considered to be out of date and that paragraph 14 of NPPF is not engaged in the determination of this appeal in seeking to address the shortfall.
52. Nevertheless, even though there may be a 5-year land supply, this does not automatically preclude granting planning permission for further development, subject to the proposed scheme complying with other development plan policies. However, as discussed above, I have concluded that granting planning permission for the proposed development would unacceptably prejudice the implementation of the Core Strategy, and would be contrary to the objectives of the BANESLP.
53. Although there are positive aspects of the scheme, not least the 35% proportion of affordable housing being offered, I consider that the adverse impacts of approving the proposal would significantly and demonstrably outweigh the benefits. Accordingly the appeal should be dismissed.

*Geoffrey Hill*

INSPECTOR

## APPEARANCES

### For Bath and North East Somerset Council:

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

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

Mr Richard Walker BA(Hons) DipTP	Planning Policy Officer
Ms Rachel Tadman MTP MRTPI	Senior Planning Officer
Ms Helen Hoynes	School Organisation Manager
Mr Daniel Stone BSc MTCP MRTPI	Senior Planning Officer
Ms Caroline Waldron IHBC MRTPI	Senior Conservation Officer
Mr Charles Potterton BA DipLA CMLI	Potterton Associates Ltd
Ms Tessa Hampden BSc MTCP MRTPI	Senior Planning Officer

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

Mr Gary Lewis	Acting Team Leader, Highways Development Control
Mr Andrew Chard	Team Manager, Parks & Bereavement Service

### For the Appellants:

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

Miss Stephanie Hall of Counsel

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

Mr Julian Harbottle MRICS	Director: Savills (UK) Ltd.,
Mr Ian Jewson BA(Hons) DipTP MRTPI	Director: Ian Jewson Planning
Mr Craig Rawlinson EurIng BEng(Hons) CEng MCIHT CMILT MIOd	Managing Director: Transport Planning Associates
Mr Edward Kitchen MA	Partner: Planning & Development Department, Montagu Evans LLP
Mrs Jane Jarvis BSc(Hons) DipLD MA CMLI	Principal Landscape Architect: SLR Consulting

### Interested Persons:

Mr V Pritchard	BANES Councillor
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Mr K Betton	Stowey-Sutton Parish Councillor
Ms Sally Monkhouse	Local resident
Ms Liz Hardman	BANES Councillor
Mr B Piper	Paulton Parish Councillor
Mr B Maher	Local resident
Mr J Bull	BANES Councillor
Mr M Evans	BANES Councillor and Midsomer Norton Town Councillor
Miss J Lewis	Midsomer Norton Town Councillor

## DOCUMENTS

### CORE DOCUMENTS

<i>Ref</i>	<i>Document</i>
CD 01	National Planning Policy Framework
CD 02	National Planning Policy Guidance
CD 03	Bath and North East Somerset Core Strategy (July 2014)
CD 04	Report on the Examination into Bath and North East Somerset Council's Core Strategy (June 2014)
CD 05	Bath and North East Somerset Local Plan (October 2007)
CD 06	Bath and North East Somerset Planning Obligations Supplementary Planning Document (July 2009)
CD 07	Bath and North East Somerset Placemaking Plan Launch Document (July 2013)
CD 08	Bath and North East Somerset Placemaking Plan Options Document (November 2014)
CD 09	Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
CD 10	English Heritage - Seeing History in the View (May 2011)
CD 11	English Heritage - The Setting of Heritage Assets (October 2011)
CD 12	Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment Supplementary Planning Guidance (April 2003)
CD 13	Valuing People, Place and Nature: A Green Infrastructure Strategy for Bath and North East Somerset (March 2013)
CD 14	Paulton Village Design Statement Supplementary Planning Guidance (March 2001)

- CD 15 Paulton Conservation Area Character Appraisal Supplementary Planning Guidance (2003)
- CD 16 Bath and North East Somerset Home to School Transport Policy
- CD 17 Childcare Sufficiency Update - March 2014
- CD 18 Primary and Secondary School Organisation Plan 2013 - 2017
- CD 19 Strategic Housing Land Availability Assessment (November 2013), comprising:
- Findings Report
  - Appendix 1: Site Assessments and Plans
  - Appendix 2: SHLAA Housing Trajectory 2011 -2029
- CD 20 Strategic Housing Land Availability Assessment Housing Trajectory 20112029 (March 2014)
- CD 21 Changes to the Strategic Housing Land Availability Assessment Housing Trajectory between November 2013 and March 2014 (March 2014)
- CD 22 Strategic Housing Land Availability Assessment Findings Report (December 2014)
- CD 23 Strategic Housing Land Availability Assessment Housing Trajectory 20112029 (December 2014)
- CD 24 Bath and North East Somerset Settlement Classification (October 2009)
- CD 25 Inspector's Note - Progression of the Examination 2014 (ID/44)
- CD 26 Core Strategy Topic Paper 7 - Keynsham and Somer Valley Site Capacities and Delivery
- CD 27 Core Strategy Topic Paper 8 - Central Bath and River Corridor Site Capacities and Delivery
- CD 28 BANES Response to ID/7 - Issue 2 - SHLAA and Flood Risk
- CD 29 BANES Response to ID/7 - Issue 2 - Bath
- CD 30 BANES Response to ID/7 - Issue 2 - Keynsham
- CD 31 BANES Response to ID/25 - SHLAA Somer Valley
- CD 32 BANES Response to ID/45 - Windsor Gas Holder and Bath Flood Risk Management Project
- CD 33 Core Strategy Statement of Common Ground - Land adjoining Odd Down
- CD 34 Core Strategy Statement of Common Ground - Land adjoining Weston (Mr Perry and Crest Nicholson)
- CD 35 Core Strategy Statement of Common Ground - Land adjoining Weston (The Silverwood Partnership)
- CD 36 Core Strategy Statement of Common Ground - Land adjoining Weston (The Equestrian Centre)

- CD 37 Core Strategy Statement of Common Ground - Land adjoining East Keynsham
- CD 38 Core Strategy Statement of Common Ground - Land adjoining South West Keynsham
- CD 39 Core Strategy Statement of Common Ground - Land at Whitchurch (Horseworld)
- CD 40 Core Strategy Statement of Common Ground - Land at Whitchurch (Barratt Homes)
- CD 41 Core Strategy Statement of Common Ground - Land at Whitchurch (Sir Michael Gregory and Belinda Gregory)
- CD 42 Ouseley J, South Northamptonshire Council v Secretary of State and Barwood Homes: [2014] EWHC 570 (Admin)
- CD 43 Lindblom J, Bloor Homes v Secretary of State & Hinckley and Bosworth Borough Council: [2014] EWHC 754 (Admin)
- CD 44 Appeal Decision: Land Between Iron Acton Way and North Road, Engine Common (APP/P0119/A/12/2186546)
- CD 45 Appeal Decision: Land at the former Lymgne Airfield, Aldington Road, Lymgne (APP/L2250/A/13/2210752)
- CD 46 Appeal Decision: Land at Monger Lane, Midsomer Norton (APP/F0114/A/13/2199783), including:
- Site Location Plan
  - Landscape Strategy Plan
- CD 47 Appeal Decision: The Batch, Bishop Sutton (APP/F0114/A/13/2196478)
- CD 48 Appeal Decision: Land north of Upper Chapel, Launceston (APP/D0840/A/13/2209757)
- CD 49 Appeal Decision: Land off Nantwich Road, Tarporley (APP/A0665/A/11/2167430)
- CD 50 Appeal Decision: Land at Brookfield Farm, Hallfields Lane, Rothley (APP/X2410/A/11/2161715)
- CD 51 Appeal Decision: Land to the north of Fosseway Gardens, Westfield (APP/F0114/A/13/2203361)
- CD 52 National Character Area Profile 118: Bristol, Avon Valleys and Ridges, Natural England (2013)
- CD 53 Landscape Assessment of Mendip District (May 1997)
- CD 54 Planning Case Officer's Report on Land at Cappards Road, Bishop Sutton for Development Control Committee on 12th February 2014
- CD 55 Planning Case Officer's Report on Land at Cappards Road, Bishop Sutton for Development Control Committee on 12th March 2014



- CD 56 Planning Officer's Delegated Report for Land at Boxbury Hill Midsomer Norton (13/04880/OUT)
- CD 57 Planning Officer's Delegated Report for Land at Abbotts Farm Close, Paulton (13/03547/OUT)
- CD 58 Stowey Sutton Parish Council Housing Needs Survey Questionnaire
- CD 59 Stowey Sutton Parish Council Housing Needs Survey Results
- CD 60 Stowey Sutton Parish Council Neighbourhood Survey Questionnaire
- CD 61 Stowey Sutton Parish Council Neighbourhood Survey Results
- CD 62 Lewis J., Cotswold District Council v Secretary of State and Fay and Son Limited: [ 2013] EWHC 3719 (Admin)
- CD 63 Mitting J., Save Britain's Heritage v Gateshead Metropolitan Borough Council: [2014] EWHC 896 (Admin)
- CD 64 Lang J., R(East Meon Forge and Cricket Ground Protection Association) v East Hampshire District Council and South Downs National Park Authority: [2014] EWHC 3543 (Admin)
- CD 65 HHJ Waksman QC., R(Hughes) v South Lakeland District Council: [2014] EWHC 3979 (Admin)
- CD 66 Gilbart J., Pugh v Secretary of State: [2015] EWHC 3 (Admin)
- CD 67 Kenneth Parker J., Colman v Secretary of State, North Devon District Council and RWE Npower Renewables Limited: [2013] EWHC 1138 (Admin)
- CD 68 Lang J., William Davis Limited and Jelson Limited v Secretary of State and North West Leicestershire District Council: [2013] EWHC 3058 (Admin)
- CD 69 Appeal Decisions:  
Land at Pulley Lane, Newland Road and Primsland Way (APP/H1840/A/13/2199085) and Land north of Pulley Lane and Newland Lane (APP/H1840/A/13/2199426)
- CD 70 Appeal Decisions:  
Land east of Springwell Lane, Whetstone (APP/T2405/A/12/2170192): Land east of Springwell Lane, Whetstone (APP/T2405/A/12/2170201) : Land off Countesthorpe Road and Springwell Lane, Whetstone (APP/T2405/A/12/2170207)
- CD 71 Appeal Decision: Land south of Broughton Road, Banbury (APP/C3105/A/14/2220513)
- CD 72 Appeal Decisions:  
Land to the north of Acland Park, Feniton, Devon (APP/U1105/A/13/2191905): Land to the west of Ottery Road, Feniton, Devon (APP/U1105/A/13/2197001): Land to the west of Ottery Road, Feniton, Devon (APP/U1105/A/13/2197002): and Land to the south of Station Road, Feniton, Devon (APP/U1105/A/13/2200204)

- CD 73 Draft Strategic Housing Land Availability Assessment Housing Trajectory 2011-2029 (November 2014)
- CD 74 Appeal Decision: Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath (APP/R0660/A/13/2192192)

## **PROOFS OF EVIDENCE**

### **Housing Land Supply**

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

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

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

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

### **Appeal A – Cappards Road, Bishops Sutton**

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

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

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

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

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

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

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

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

**Appeal B – Boxbury Hill**

***For Ms Caroline Waldron***

B/BANES/CW/POE	Proof of evidence
B/BANES/CW/APP	Appendices to proof of evidence
B/BANES/CW/SUM	Summary proof of evidence

***For Mr Charles Potterton***

B/BANES/CP/POE	Proof of evidence (including Summary Proof of Evidence) with Appendices
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***For Ms Tessa Hampden***

B/BANES/TH/POE	Proof of evidence
B/BANES/TH/SUM	Summary Proof of evidence

***For Mr Gary Lewis***

B/BANES/GL/POE	Proof of evidence
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***For Mr Andrew Chard***

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

***Ms Helen Hoynes***

B/BANES/HH/POE	Proof of evidence
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***For Mr Edward John Kitchen BA MA***

B/EWH/EK/POE	Proof of evidence
B/EWH/EK/APP	Volume of appendices to proof of evidence
B/EWH/EK/SUM	Summary proof of evidence

***For Mrs Jane Jarvis***

B/EWH/JJ/POE	Proof of evidence
B/EWH/JJ/APP	Appendices to proof of evidence (in 2 volumes)
B/EWH/JJ/SUM	Summary proof of evidence
B/EWH/JJ/REB	Rebuttal proof of evidence

***For Mr Ian Jewson***

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

## **Appeal C – Abbotts Farm Close, Paulton**

### **For Ms Rachel Tadman MTP MRTPI**

C/BANES/RT/POE	Proof of evidence (no summary) including Appendix
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### **For Ms Helen Hoynes**

C/BANES/HH/POE	Proof of evidence
C/BANES/HH/APP 1-4	Appendices to proof of evidence
C/BANES/HH/SUM	Summary proof of evidence

### **For Mr Gary Lewis**

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

C/BANES/AC/POE	Proof of evidence (including overall conclusion)
C/BANES/AC/APP A-B	Appendices to proof of evidence

### **For Mr Craig Rawlinson**

C/EWH/CR/POE	Proof of evidence
C/EWH/CR/APP	Volume of appendices to proof of evidence
C/EWH/CR/SUM	Summary proof of evidence
C/EWH/CR/REB	Rebuttal proof of evidence with appendices

### **For Mr Ian Jewson**

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

## **DOCUMENTS HANDED IN DURING THE COURSE OF THE INQUIRY**

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

BANES 01	Bundle of copy emails relating to discussions on SHLAA sites submitted by Mr Walker.
BANES 02	Appeal Decision APP/F0114/A/14/2218780 – Stitchings Shord Lane, Bishops Sutton, Bristol BS39 5UB.
BANES 03	Appeal Decision APP/F0114/A/14/2217941 – Land at Ham Lane, Bishops Sutton, Bristol BS39 5UB.
BANES 04	Appeal Decision APP/Y3425/A/14/2217578 – Land between Ashflats Lane and A449 Mossnit, Stafford ST18 9BP.
BANES 05 i	Monuments Protection Programme: The Coal Industry. Recommendations for Protection (Step 4 Report) and possible

- inclusion of The Batch as a scheduled monument, submitted by Ms Waldron.
- BANES 05 ii Monuments Protection Programme - Site Assessment Old Mills Colliery Tip, submitted by Ms Waldron.
- BANES 06 Supplemental proof of evidence on the meaning an application of the words 'around' and 'balance' – put in by Mr Walker.
- BANES 07 Draft Committee Minutes re: MOD Warminster Road and MOD Foxhill applications.
- BANES 08 Cost Application.

***For the Appellants***

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

EWB 18	Section 106 Planning Obligation for Abbott's Farm Close site.
EWB 19	Section 106 Planning Obligation for Boxbury Hill site.
EWB 20	Costs Application 1 – relating to 5 year Land Supply.
EWB 21	Costs Application 2 – relating to late evidence put in by Mr Walker.
EWB 22	Costs Application 3 – relating to late evidence put in by Ms Waldron.
EWB 23	Response to BANES' Costs Application.

**For Interested Persons**

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

**PLANS**

**Appeal A – Cappards Road, Bishops Sutton**

**Application plans**

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

**Illustrative drawings supporting the application**

Plan A.2	100-1 Rev D	Illustrative layout
Plan A.3	112	Illustrative Sections
Plan A.4	2817/01	Topography
Plan A.5	2817/02	Landscape Planning Designations and Character Areas
Plan A.6	2817/03A	Zone of Theoretical Visibility on Completion
Plan A.7	2817/04A	Landscape Strategy
Plan A.8	2817/ PHOTO/01	Photographic Viewpoint 1
Plan A.9	2817/ PHOTO/02	Photographic Viewpoint 2
Plan A.10	2817/ PHOTO/03	Photographic Viewpoint 3
Plan A.11	2817/ PHOTO/04	Photographic Viewpoint 4
Plan A.12	2817/ PHOTO/05	Photographic Viewpoint 5
Plan A.13	2817/ PHOTO/06	Photographic Viewpoint 6

## Appeal B – Boxbury Hill

	Drawing No.	Subject/ Description
<b>Application plans</b>		
Plan B.1	5734-01C	Application Site Plan
Plan B.2	1306-59 Figure 4.1	Proposed access strategy
<b>Illustrative drawings supporting the application</b>		
Plan B.3	5734-SK04A	Illustrative Site Layout Option 2
Plan B.4	131017-BXH-TCP-NC-1.1	Tree Constraints Plan
Plan B.5	Volume of drawings and photographs	Landscape Planning Context
<b>Superseded plans</b>		
Plan B.6	5734-SK02	Illustrative Site Layout
Plan B.7	5734-01A	Application Site Plan
Plan B.8	5734-SK04	Illustrative Site Layout Option 2

## Appeal C – Abbotts Farm Close, Paulton

	Drawing No.	Subject/ Description
<b>Application plans</b>		
Plan C.1	13131/1030A	Location Plan
Plan C.2	1109-84 CMR/2	Access Arrangements
<b>Illustrative drawings supporting the application</b>		
Plan C.3	13000/3200 D	Framework Plan
Plan C.4	2586-05B	Landscape and Planting Strategy
Plan C.5	13131/2100 B	Site Sections
Plan C.6	13131/2101	Site Section C-C
Plan C.7	130715-AFCPN-TCP-AM-1.2	Tree constraints plan
<b>Superseded plans</b>		
Plan C.8	13000/3200 B	Framework Plan
Plan C.9	13000/3200 C	Framework Plan
Plan C.10	13131/2100	Site Section

Plan C.11	2586-05	Landscape and Planting Strategy
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Richborough Estates