

Addendum to Planning and Retail Statement 'Tess Square'



and Butts Close



Planning, Sustainability, and Lighting Statement
supporting a hybrid planning application consisting
of

A full planning application for a mixed-use development comprising a food store, office space, café, and mixed-use space for E class uses (e.g. estate agents, hairdresser, funeral care, dentist, vet), and 2x 2-bed flats. Demolition of redundant agricultural sheds. Plus, a new parking area with 30 parking spaces for St. Gregory's Church and St Gregory's Primary School. Associated landscaping and engineering operations, access arrangements, on land west of church hill, Marnhull.

Outline planning application with all matters reserved except for access for up to 120 dwellings on land off Butts Close and Schoolhouse Lane, Marnhull

November 2023

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Version: 1

Version control	Name	Date
Report author:	Clare Spiller BSc (Hons) PG Dip TP MRTPI	November 2023

1. Reason for this addendum

- 1.1 This Planning addendum has been prepared following the Councils updated position statement in relation to the Housing Land Supply Report for the former district area of North Dorset for 1 April 2023 (published by Dorset Council 19th September 2023). This report concludes that they now have 110% for the housing delivery test (HDT), and 5.74 yrs for the 5 yr housing land supply position (HLS). The LPA allude to no longer having to apply the 'planning balance' as required by paragraph 11.d of the NPPF, due to this latest published report.
- 1.2 We consider that this updated position statement together with the assumptions made by the LPA within it is flawed. Section 2 and 3 set out the reasons this updated position statement cannot be relied upon.

2. Housing Delivery Test

- 2.1 In response to Dorset Councils updated position statement for the former North Dorset District Area in terms of the housing delivery test (HDT), the applicant has sought Councils Opinion, this opinion is attached as appendix 1 to this addendum. This sets out the very detailed reasons the HDT if relied upon by the decision maker would be an 'unsound decision' and 'open to challenge'. I understand that officers of the Council will read this attachment in full, but I reiterate that this Counsel opinion concludes that:

"4.6 the Government has expressly declined to update the HDT since 2021. This declination has not been accompanied by any policy imperative or reference to the ability of local authorities to calculate and publish the HDT results themselves. On the contrary, the Government has expressly stated that it will publish the 2022 HDT results but is awaiting the outcome of the consultation before doing so and what amendments (if any) should be made thereto. Until that occurs, existing national policy requires the application of the most recent (2021) result (which was the approach taken by the Inspector in the recent appeal decision of Land off Herrison Road, Charlton Dorset), where the Inspector acknowledged that the most recent HDT result was 2021.

4.7 However, as explained in paragraph 4.2 above, the NPPF is a material consideration. This would necessarily also apply to the HDT. It follows that the LPA can apply the methodology in the HDT rulebook to calculate what the HDT result was likely to be for subsequent years after had it been published by Government. However, because Government has not published the HDT result for 2022, and explained why not, then national policy indicated the 2021 result should be used. Consequently, if the LPA were to start relying upon its own unauthorised HDT result in terms of the consequences that flow from the NPPF, then it would run the risk of departing from national policy without any clear explanation or authority and, in turn, risk issuing a potentially unsound decision if it were to be determinative in its decision-making processes."

- 2.2 Therefore, contrary to the LPAs updated position statement, we would assert that the "presumption in favour of sustainable development" still applies.

3. Housing Land Supply

- 3.1 Having regards to the updated position statement purporting the HLS now being in excess of 5 years at 5.74 years, the applicant has sought the advice of Turley, a recognised national firm of planning expertise in this area. Their advice is attached as appendix 2 to this addendum which sets out in detail the flaws in the Council's position statement with regards to HLS. I understand that officers of the Council will read this attachment in full, but I reiterate that this report concludes that:

"5.1 The Council claim to have a supply of 5.74 years, with sites projected to deliver a total claimed deliverable supply of 2,247 homes. This is a surplus of 289 homes.

5.2 We have undertaken an assessment of the Council's latest position statement and suggest there is a lack of clear evidence to include several sites within the supply. We consider that several sites do not meet the test of being deliverable for five year supply purposes and that the quantum of deliverable supply should be reduced by circa 422 homes.

5.3 We also consider that the Council's approach to calculating its own updated HDT results is not in line with the guidance in the NPPF which is clear that the government's published position should be used until a new update is published.

5.4 Based on our calculations the actual supply figure is 4.07 years, with a deliverable supply of 1,825 homes. This is a shortfall of 413 homes.

5.5 It is clear that the North Dorset area of Dorset Council cannot demonstrate a five year housing land supply in accordance with paragraph 74 of the NPPF."

- 3.2 Therefore, contrary to the LPAs updated position statement we assert that the "presumption in favour of sustainable development" still applies.

4. Conclusion

- 4.1 The evidence (Counsels opinion & the report by Turley) that we have provided, dictates that the 'presumption in favour of sustainable development' must still apply.
- 4.2 The LPA in making their decision will therefore have to consider this application with the 'presumption in favour of sustainable development'.

Appendix 1- Counsels opinion on HDT

IN THE MATTER OF THE TOWN & COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF:

Various planning applications in North Dorset and the application of the Housing Delivery
Test

OPINION

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Ref: Steven Bainbridge

1. Opinion and Summary.

In this matter, I am instructed by Chapman Lily Planning Limited (“CLP”) on behalf of MB Crocker. This matter concerns advice on the Housing Delivery Test (“HDT”) position statement for the North Dorset Plan Area and the approach taken by the Local Planning Authority (“LPA”). For the reasons set out herein, my opinion can be summarised as follows:

- (a) Interpretation of planning policy is a matter of law.
- (b) The language of the NPPF is clear.
- (c) Publication of the HDT results is solely within the purview of the Secretary of State. Until the Secretary of State publishes the 2022 HDT results the previously published results should be used.
- (d) Although the LPA can have regard to its own evidence regarding the likely HDT as a material consideration, if the LPA were to start relying upon its own unauthorised HDT in terms of the consequences that flow from the NPPF then it would run the risk of departing from national policy without any clear explanation or authority and issuing a potentially unsound decision if it were to be determinative in its decision-making processes.

2. Background.

2.1 MB Crocker (“MBC”) has an interest in the development of various sites within the North Dorset Plan Area. Some are yet to be subject to planning applications, others are undetermined planning applications or the subject of pending appeals.

2.2 Each of these applications and appeals give rise to issues arising out of the operation of footnote 8 to § 11d) of the NPPF and the application of the tilted balance. This is because the LPA had previously acknowledged that it was unable to demonstrate the requisite 5-year housing land supply (“5YHLS”) in the former North Dorset District Council area¹.

¹ Dorset Council is now a unitary council but has been applying the 5YHLS requirements on a disaggregated basis in respect of the previous District Council plans and areas, here the North Dorset Local Plan part 1 (adopted 2016) until the adoption of a new Local Plan (which is presently at an early stage).

- 2.3 On 19 September 2023, The LPA published its latest Housing Land Supply position statement for the North Dorset Plan area at 1st April 2023. This position statement indicates that the LPA can demonstrate a deliverable housing land supply of 5.74 years. Whether the sites relied upon by the LPA are all deliverable within the meaning of the NPPF would require a detailed interrogation and is not the subject of this Opinion.
- 2.4 However, the LPA position statement also contends that it can now demonstrate delivery in excess of 100% when applying the HDT.

3. The Housing Delivery Test.

- 3.1 Paragraph 11 of the NPPF engages the presumption in favour of sustainable development (subject to the matters indicated in §11d) i, ii, and fn7) for decision making in the absence of relevant development plan policies or when those most important for the determination of an application are out-of-date. Fn8 indicates the presumption is to apply: *“for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with appropriate buffer, as set out in paragraph 74); or where the Housing Delivery test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.”*

- 3.2 Paragraph 76 of the NPPF provides:

To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of underdelivery and identify actions to increase delivery in future years.

- 3.3 The HDT is an annual measurement of housing delivery in the area of relevant plan-making authorities. The rule book sets out the method for calculating the HDT results. Annex 1 (Implementation) to the NPPF explains as follows: (emphasis added):

223. The Housing Delivery Test **will apply the day following publication of the results, at which point they supersede previously published results. Until new Housing Delivery Test results are published, the previously published result should be used.** For the purpose of footnote 8 in this Framework,

delivery of housing which was substantially below the housing requirement means where the Housing Delivery Test results:

- a) for years 2016/17 to 2018/19 (Housing Delivery Test: 2019 Measurement, published 13 February 2020), indicated that delivery was below 45% of housing required over the previous three years;
- b) for years 2017/18 to 2019/20 (Housing Delivery Test: 2020 Measurement, published 19 January 2021), and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

3.4 Annex 2 (Glossary) to the NPPF explains the HDT as follows: (emphasis added)

Housing Delivery Test: Measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data. **The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November.**

3.5 At paragraph 23 of the recent draft NPPF consultation², the Secretary of State outlined the following intention:

“It remains our intention to publish the 2022 Housing Delivery Test results. However, given our proposed changes and consultation on the workings of the Housing Delivery Test, we would like to receive views on whether the test’s consequences should follow from the publication of the 2022 Test or if they should be amended, suspended until the publication of the 2023 Housing Delivery Test, or frozen to reflect the 2021 Housing Delivery Test results while work continues on our proposals to improve it. We will take a decision on the approach to the Housing Delivery Test and the implementation of any the proposed changes in due course, once we have analysed consultation responses.”

3.6 The Secretary of State has not published these ‘new’ HDT figures (or indeed any figures for HDT since 2021). However, Dorset Council has sought to fill this vacuum by calculating its own figure using the prescribed methodology.

4. Discussion.

4.1 It is trite planning law that the interpretation of planning policy is a matter of law, and the application of policy is a matter for the planning decision taker (see *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] UKSC 37 and *Tesco Stores Ltd v Dundee*

² December 2022.

City Council [2012] UKSC 13). Consequently, the interpretation of the NPPF and its provisions concerning the HDT are a matter of law, whilst their application is a matter for the decision taker.

4.2 The application of the HDT is triggered by the NPPF. It is not a creature of statute but a feature of national policy and is to be considered as a material consideration in the determination of planning applications and appeals. The approach to be taken to the application of the HDT is clear:

- (a) The meaning to be given to the HDT is provided in the glossary to the NPPF.
- (b) Its application is explained in paragraph 223 of the NPPF.
- (c) The consequences of the HDT results are explained in paragraphs 76 and fn.8 to paragraph 11d) of the NPPF.

4.3 The language in the glossary is clear. The HDT is a measurement using both national and local authority data, the results of which are to be published by the Secretary of State. The glossary does not admit or otherwise indicate that publication of the HDT results is within the purview of the local authority or anyone other than the Secretary of State.

4.4 Moreover, this construction is internally consistent with paragraph 223 which is also clear in its language. The HDT results will apply the day following the publication of the results. As explained above, the Glossary is clear that publication of the HDT results is a matter for the Secretary of State. Therefore, it is only when the Secretary of State publishes the HDT results that they can supersede the previously published results, which should be used until that occurs. The language is again explicit and clear: “[u]ntil new Housing Delivery Test results are published, the previously published result should be used.”. Consequently, until new results are published by the Secretary of State the decision-maker should use the previously published result. There does not appear to be any authority for the LPA to recalculate the HDT of its own volition. This is unsurprising in view of the above.

4.5 I have had regard to the HDT rulebook. That states that the HDT is an “annual” measurement of housing delivery in the area of the relevant plan-making authorities and that the HDT will be published annually in November by the Ministry for Housing,

Communities and Local Government. If there is any tension between the rule book and the NPPF I am of the opinion that it should be resolved in favour of the NPPF, which has been the subject of consultation and is expressed as the manifestation of national policy.

- 4.6 As indicated above, the Government has expressly declined to update the HDT since 2021. This declination has not been accompanied by any policy imperative or reference to the ability of local authorities to calculate and publish the HDT results themselves. On the contrary, the Government has expressly stated that it will publish the 2022 HDT results but is awaiting the outcome of the consultation before doing so and what amendments (if any) should be made thereto. Until that occurs, existing national policy requires the application of the most recent (2021) result (which was the approach taken by the Inspector in the recent appeal decision of *Land off Herrison Road, Charlton Dorset*), where the Inspector acknowledged that the most recent HDT result was 2021.
- 4.7 However, as explained in paragraph 4.2 above, the NPPF is a material consideration. This would necessarily also apply to the HDT. It follows that the LPA can apply the methodology in the HDT rulebook to calculate what the HDT result was likely to be for subsequent years after had it been published by Government. However, because Government has not published the HDT result for 2022, and explained why not, then national policy indicated the 2021 result should be used. Consequently, if the LPA were to start relying upon its own unauthorised HDT result in terms of the consequences that flow from the NPPF, then it would run the risk of departing from national policy without any clear explanation or authority and, in turn, risk issuing a potentially unsound decision if it were to be determinative in its decision-making processes.

28 October 2023

Paul Cairnes KC
No5 Chambers

Appendix 2- Turley Report on 5 yr HLS

**Land At E 378776 N 119064, Salisbury Street,
Marnhull**

Appeal Reference APP/D1265/W/23/3323727

**Five Year Supply Assessment – North Dorset
area of Dorset Council**

On behalf of P. & D. Crocker Ltd

October 2023

Turley

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October 2023

1. Introduction

Introduction

- 1.1 This report has been prepared by Turley on behalf of P. & D. Crocker Ltd in respect of its planning appeal (ref. 3323727) on Land at E 378776 N 119064 Salisbury Street, Marnhull, within the authority of Dorset Council (North Dorset area). This report provides our assessment of the Council's five year housing land supply position in response to the Council's Statement of Case, which included the Council's updated North Dorset Housing Land Supply Report.
- 1.2 The latest supply position from the Council is set out in the North Dorset Housing Land Supply Report, dated September 2023. The statement covers the five year supply period from 2023 to 2028. This is an updated Supply Report from the one in at the time the planning application for the Appeal Proposals was determined, and which previously identified that the Council could only demonstrate a 4.27 year supply.
- 1.3 Within the Council's latest Supply Report the Council now claim to have a supply of **5.74 years**, with sites projected to deliver a total claimed deliverable supply of 2,247 homes. This is a surplus of only **289 homes**. However, based on our review of the Council's Supply Report, there are several sites included within the Council's supply that do not meet the test of being 'deliverable' or where unrealistic delivery rates have been assumed. We therefore consider that the Council's actual supply figure is significantly lower than suggested in the Supply Report and, is in fact below five years.

Scope of Assessment

- 1.4 This report comprises the findings following our review of the Council's Five-Year Housing Land Supply Report. This has involved consideration of the NPPF context, a review of the Local Plan position and housing requirement, and our professional experience in testing land supply.
- 1.5 Commentary is provided on the following:
- Determining the appropriate five year period for assessing five year supply;
 - Determining the appropriate five year housing land supply requirement;
 - The application of an appropriate buffer to the calculation;
 - Identifying a realistic and deliverable supply in accordance with the NPPF definition of a deliverable site;
 - Consideration of the Council's approach to lead in times and any local, regional or national evidence provided to support this; and
 - Calculating the Council's housing land supply position using the steps above.

2. Planning Policy Context

The Development Plan

- 2.1 The North Dorset Local Plan Part 1 was adopted in January 2016. The Local Plan has a start date of 2011 and covers the 20-year period to 2031.
- 2.2 Local Plan Policy 6 (Housing Distribution) states that the Council will make provision for the delivery of at least 5,700 new homes (equating to 285 per annum) between 2011 and 2031.
- 2.3 However, as the adopted Local Plan is more than five years old, for the purposes of calculating five year supply the Council use the Local Housing Need (LHN) figure derived from the government's standard methodology calculation. The current, 2023 based LHN for North Dorset is 373 homes per annum.

Other Material Considerations

National Planning Policy Framework (September 2023)

- 2.4 **Paragraph 11** confirms that for decision taking, where there are no relevant development management plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:
- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as taken as a whole.
- 2.5 **Footnote 8** states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year housing supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75%) of the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.
- 2.6 The definition of a 'deliverable' site is included at Annex 2 to the NPPF and is as follows:
- To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*
- (a) *sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered*

within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

(b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

2.7 **Paragraph 60** advises that to support objectives of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed, and that land with permission is developed without unnecessary delay.

2.8 **Paragraph 74** outlines that strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years of housing against the housing requirement in adopted strategic policies or against the local housing need where the strategic policies are more than five years old.

2.9 **Footnote 39** associated with paragraph 74 states that the local housing need should be applied unless the strategic policies which are more than five years old have been reviewed and found not to require updating. The local housing need should be calculated using the standard method set out in national planning guidance. The supply of specific deliverable sites should also include a buffer of:

- (a) 5% to ensure choice and competition in the market for land;
- (b) 10% where a five year supply has been demonstrated through an annual position statement or recently adopted plan;
- (c) 20% where a significant under delivery of housing over the previous three years has occurred.

2.10 **Paragraph 75** outlines that a five year supply of deliverable sites, with the appropriate buffer, can be demonstrated where established in a recently adopted plan or in a subsequent annual position statement.

Planning Practice Guidance

2.11 The PPG provides further guidance on assessing a five year housing supply including Sections on Housing Supply and Delivery, Housing and Economic Land Availability Assessment and Housing for Older People.

The Dorset Council Local Plan

2.12 A Dorset wide local plan is in preparation. Initial consultation was undertaken on an Issues and Options version of the plan in January 2021.

2.13 The Council's Local Development Scheme (LDS) sets out that a Publication version of the plan will be out for consultation in December 2024. The LDS anticipates that the plan will be submitted for examination in April 2025, and adopted in Spring 2026.

3. Appeal decisions that have considered the approach to ‘clear evidence’

3.1 There are a number of sites included in the Council’s supply that have no detailed planning permission and so fall into limb b) of the definition of deliverable. Such sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

3.2 In this context, there have been a number of recent appeal decisions where the definition of a deliverable site and the burden in respect of presenting ‘clear evidence’ has been considered.

Woolpit, Suffolk (Ref. APP/W3520/W/18/3194926), September 2018

3.3 The Inspector’s decision in the Woolpit appeal was one of the first decisions following the revised definition of a deliverable site in the NPPF.

3.4 It confirmed that, for sites with only outline permission, the onus is on the Council to provide the necessary clear evidence of deliverability. The Inspector stated, at paragraph 68, that:

“Sites with outline planning permission make up a very large proportion of the Council’s claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years...the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.”

3.5 It also confirmed that a site’s status at the base date of any supply period is relevant as to whether or not it should be considered developable;

“In my view the definition of ‘deliverable’ in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.¹¹ There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council’s supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council’s supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR.”

Ardleigh, Colchester (Ref. APP/P1560/W/17/3185776), September 2018

3.6 At the time of the appeal, the draft PPG had been issued outlining the potential ways in which clear evidence might be provided. As the guidance had not yet been confirmed, the Inspector considered it appropriate to take a precautionary approach and to expect necessary evidence to involve a clear commitment to a programme of delivery.

- 3.7 When considering sites with outline planning permission only, the Inspector stated at paragraph 94:

*“Three of the sites have **not yet had applications for approval of reserved matters, which must be seen as a key milestone in the delivery process.** The Council’s own assessment acknowledges potential difficulties in bringing forward development on these sites...uncertainties about viability and access prevent full confidence of delivery within the period.” (my emphasis).*

- 3.8 In this decision, sites with only outline permission were subsequently omitted from the predicted supply.

Little Sparrows, Sonning Common, South Oxfordshire (APP/Q3115/W/20/3265861), June 2021

- 3.9 The requirement for clear evidence and what it should comprise was considered in an appeal at Little Sparrows, Sonning Common. In the decision letter, dated June 2021, the Inspector states, at paragraphs 20 and 21, that:

“20. I have also had regard to the PPG advice published on 22 July 2019 on ‘Housing supply and delivery’ including the section that provides guidance on ‘What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking.’ The PPG is clear on what is required:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions.”

This advice indicates to me the expectation that ‘clear evidence’ must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed proforma from a developer or agent does not in itself constitute ‘clear evidence’. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.” (my emphasis)

London Road, Woolmer Green (Ref. APP/C1950/W/17/3190821), October 2018

- 3.10 The Inspector recognised at Paragraph 30 of the decision that there is no presumption of deliverability from sites within the second limb of the definition of a deliverable site, stating:

“The second closed list refers to sites: with outline planning permission; with permission in principle; allocated in the development plan or identified on a brownfield register. Whilst such sites can be included within the 5-year HLS, there is no presumption of deliverability and it is for the LPA to justify their inclusion with clear evidence that housing completions will begin on-site within 5 years.”

- 3.11 When considering sites with outline permission, the Inspector concluded at paragraph 32 that the information provided fell “well short” of the clear evidence required by the Framework.

Bures Hamlet, Essex (Ref. APP/Z1510/W/18/3207509), March 2019

- 3.12 In the Bures Hamlet appeal, the Inspector considered the extent of evidence presented by the Council, including how this should be provided. At paragraph 66 of the decision, the Inspector found that:

“Where there is to be a reliance on an annual assessment then that clear evidence should logically be included in that published assessment or at least published alongside it. That would qualify as publicly available in an accessible format as the PPG requires. It would accord with guidance in PPG Paragraph 3-048 which applies to all forms of annual review including, but not limited to, annual position statements. That is not to say there should be publication of every email or every note of a meeting or telephone conversation. The information can be provided in summary form but there needs to be some means of identifying the basis for the conclusion reached.”

- 3.13 When considering the information made available in the Annual Monitoring Report (AMR), the Inspector states at paragraph 67 that:

“The information published here in the AMR is minimal and it relies heavily on unsupported assertions that a site will be delivered. That does not amount to clear evidence. In most cases it does not include the additional information that was introduced only in oral evidence at the inquiry such as: the date when a reserved matters submission was made or anticipated; when a S106 obligation was completed; why a full planning application and not a reserved matters application was submitted on a site that already had outline permission; the source of an estimate of a delivery rate; any assumptions and yardsticks that were applied where direct information was in doubt or missing; or other information of the type suggested in PPG paragraph 3-036.”

- 3.14 The Inspector concludes at paragraph 69 that the Council has not provided clear evidence in the AMR that there is a five year housing land supply. He also concluded that, whilst there was insufficient evidence to draw a precise conclusion on supply, the likelihood is that the supply was closer to the Appellant’s figure of 4.45 years.

Southfield Road, Gretton (Ref. APP/U2805/W/18/3218880) August 2019

- 3.15 The Inspector considered the position on four contested sites against the NPPF definition of a deliverable site and the revised PPG guidance on what constitutes ‘clear evidence’.

The Inspector recognises at paragraph 35 that consideration of clear evidence now focuses on 'how much' and whether progress is 'firm'.

- 3.16 Within the Inspector's analysis of the four disputed sites, he considered that:
1. Information limited to a developer holding a meeting in respect of progressing towards a detailed application is not considered to be firm evidence of progression of reserved matters (paragraph 37).
 2. There had been attempts to develop on a site for a number of years and no firm progress had been demonstrated by the Council that it would deliver (paragraph 38).
 3. On a large sustainable urban extension, the delivery on site had been pushed back through several reviews of AMRs and the Inspector had difficulty with the evidence presented being sufficiently clear enough to demonstrate the Council's trajectory (paragraphs 39 and 40).
- 3.17 The Inspector concluded that the Council's submission fell short of the clear evidence required by the Framework.

Land at Farleigh Farm, Backwell (Ref. APP/D0121/W/21/3285624), June 2022

- 3.18 Finally, in an appeal in Backwell in June 2022, the Inspector considered the concept of deliverability and what might be meant by the requirement for clear evidence. At paragraphs 48 and 49 of his decision, the Inspector states the following:

"I start by clarifying the concept of 'deliverability'. The Framework Annex 2 sets out the main considerations in this regard. In particular, Category A sites which do not involve major development and have planning permission, and all those sites with detailed planning permission should be considered deliverable in principle, unless there is clear evidence that homes will not be delivered within five years. In contrast Category B sites, including those which have outline planning permission for major development or have been allocated in a development plan, should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The essential point for both categories is whether it is reasonable to assume that they will contribute to the five-year supply, though caselaw has determined that it is not necessary for there to be certainty of delivery as anticipated.

*Some examples of the nature of 'clear evidence' are provided in the planning practice guidance (PPG). 5 These are necessarily generalised and refer to indicators such as 'progress towards approving reserved matters' and 'firm progress with site assessment work'. **Nonetheless, the evidence provided must be tangible and directly relevant to achieving development on site, as opposed to speculation and assertion.** In doing so such evidence should support the key test of whether there is a 'realistic prospect' of delivery within five years." (my emphasis)*

Summary of Appeal Decisions and Approach to ‘clear evidence’

3.19 Drawing the findings of the various appeals summarised above, it is our view that the following is relevant when considering whether a site within limb b) has the necessary clear evidence to be considered deliverable:

- i. the onus is on the Council to provide the necessary clear evidence that first homes will be delivered in the five year period;
- ii. any clear evidence should logically be included in the Council’s published assessment or at least published alongside it;
- iii. the evidence provided must be tangible or cogent and directly relevant to achieving development on site, as opposed to speculation and assertion;
- iv. clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward;
- v. securing an email or completed proforma from a developer or agent does not in itself constitute clear evidence;
- vi. the holding of a meeting to discuss progress towards a detailed application is not sufficient clear evidence;
- vii. an application for approval of reserved matters, should be seen as a key milestone in the delivery process, but firm progress of the determination of any such application that has been submitted is also relevant to determine whether sufficient clear evidence can be demonstrated;
- viii. where there is evidence that the delivery of a site has been pushed back through several reviews of AMRs, the current claimed delivery assumptions on that site should be approached with considerable caution; and
- ix. where there have been attempts to develop on a site for a number of years and no firm progress had been demonstrated by the Council that it would deliver, then current claimed delivery assumptions on that site should be approach with considerable caution.

4. Assessment of Housing Land Supply

- 4.1 This section of the report provides our assessment of the housing land supply position in the North Dorset area of Dorset Council.
- 4.2 The Council's latest position statement is dated September 2023 and covers the period from 2023 to 2028. Within this update, the Council claims to have a deliverable supply of 2,247 homes, against a requirement of 1,865 homes.
- 4.3 The Council apply a 5% buffer to land supply calculations – which we do dispute and consider later in this section. With a 5% buffer, this results in a housing requirement of 1,958 homes for the upcoming supply period. This equates to a claimed supply of 5.74 years (a surplus of 289 homes).
- 4.4 Appendix 1 to the Council's position statement provides a breakdown of the land supply position. The Appendix comprises a table setting out all of the sites included in the supply and lists details including site status, and predicted delivery between 2023/24 and 2027/28 (0-5 years), and also anticipated delivery in the 6-10 year and 11-15 year periods. The total anticipated delivery for each site over the five years is not broken down on an annual basis.
- 4.5 Appendix 1 identifies a supply of deliverable sites of 2,247 homes.

The Appropriate Five Year Supply Period

- 4.6 The position statement presents completions data up to 31 March 2023. Given that there is data for the latest monitoring year, the Council has an up to date supply position for the 2023-2028 period. We agree that this is the most up to date period on which to assess supply.

The Housing Requirement

- 4.7 The North Dorset Local Plan 2011-2031 was adopted in January 2016. Local Plan Policy 6 (Housing Distribution) states that the Council will make provision for the delivery of at least 5,700 new homes (equating to 285 per annum) between 2011-2031.
- 4.8 However, as the adopted Local Plan became more than five years old in January 2021 and the housing requirement has not been reviewed and found not to require updating¹, for the purposes of calculating five year supply the Council use the Local Housing Need (LHN) figure derived from the government's standard methodology calculation. The current, 2023 based LHN for North Dorset is 373 homes per annum. The Council set out the calculation for this requirement figure in the Supply Report (section 5, pages 12-14). We do not disagree that this is the correct figure for the purposes of calculating five year supply.

¹ As set out under NPPF paragraph 74 and footnote 39

Buffer and Shortfall/Surplus

- 4.9 The latest published Housing Delivery Test (HDT) results are those for 2021 published in January 2022, and these remain the latest formal figure. North Dorset’s result from the January 2022 published results is 69%. The consequence of this result (a result below 75%) is that the Presumption in favour of sustainable development is triggered, and that a 20% buffer should be applied to the five year supply calculation.
- 4.10 However, the Council has sought to avoid the consequences of the official published HDT results by updating the calculation themselves. Tables 4.3 and 4.4 of the Supply Report set out the Council’s calculations for a 2022 based and 2023 based HDT result; 74% and 110% respectively. The Council seek to use its 2023 based calculation for the purposes of calculating supply and therefore only apply a 5% buffer to the supply calculation. We do not agree with this approach.
- 4.11 Footnote 8 (to paragraph 11 of the NPPF) and footnote 41 make clear that the triggering of the presumption and the use of a 20% buffer flow from the HDT. The HDT results are published by the government and should not be individually calculated by local authorities themselves. Paragraph 223 of the NPPF states;
- “The Housing Delivery Test will apply the day following publication of the results, at which point they supersede previously published results. Until new Housing Delivery Test results are published, the previously published result should be used.”*
- 4.12 We consider that the above is very clear that the official published results should be used and not an updated calculation prepared by local authorities themselves. For the purposes of calculating five year supply we therefore consider that a 20% buffer should be applied (and indeed, the presumption in favour of sustainable development at paragraph 11 of the NPPF remains triggered), as is the consequence of the latest published HDT result for North Dorset, which is 69%.
- 4.13 Notwithstanding that the HDT is the correct test on which to establish what buffer should be applied to the supply calculation it is still relevant to consider how the Council has delivered against the housing requirement in the plan to date. The Council’s delivery to date against the Local Plan requirement is set out in Table 3.1.

Table 4.1: Delivery to Date

Year	Requirement	Delivery	Shortfall/Surplus
2011/12	285	375	90
2012/13	285	144	-141
2013/14	285	227	-58
2014/15	285	178	-107
2015/16	285	220	-65
2016/17	285	142	-143
2017/18	285	159	-126

2018/19	285	223	-62
2019/20	285	96	-189
2020/21	285	197.6	-87.4
2021/22	285	298	13
2022/23	285	511	226
Total	3,420	2770.6	-649.4

- 4.14 As can be seen from Table 4.1, there has been a significant shortfall in delivery of homes since 2011/12 of 649 homes. This equates to more than two full years of the annualised housing requirement. The shortfall is serious and significant.
- 4.15 With a 5% buffer added to the LHN of 373 (the Council’s position), the total five year supply requirement is 1,958 homes. However, as set out above we consider that, when the NPPF requirements are correctly applied, a 20% buffer should be applied in line with the government’s latest published HDT result. We therefore consider that the actual five year supply requirement (with a 20% buffer) is **2,238 homes**. Nevertheless, to assist the Inspector, we have set out the Council’s five year housing land supply position with both a 5% and 20% buffer.
- 4.16 It is relevant to note at this stage that, as a result of correctly applying a 20% buffer in accordance with the NPPF, the Council’s claimed deliverable supply of 2,247 homes would mean that the Council (on its own figures) can only demonstrate a 5.02 year supply, an excess of only 9 homes. It is clear then why it has sought to progress its own HDT test results, but this is not an approach endorsed in any way by the NPPF.

Sources of Supply

- 4.17 We have undertaken an initial review of all claimed sources of supply, and where we consider sites to be disputed we have set this out in Table 3.2 later in this Section. Our detailed scrutiny at this stage has focused on major sites (over 10 units), and in particular sites with outline permission only. The review has been undertaken in accordance with the definition of deliverable sites set out in Annex 2 of the NPPF.
- 4.18 There are several sites with outline permission only for major development, or where an application is yet to be determined. These sites fall within limb b of the definition of deliverable within the NPPF and so should only be included in the Council’s supply where there is clear evidence that first completions will begin within the 5 year period – as is clear from our consideration of appeals in Section 3, the onus is on the Council in this respect..
- 4.19 In respect of the provisions of evidence from the Council, there is some very limited commentary within the trajectory tables (Appendix 1 to the Council’s Supply Report) on a site specific basis but there are no accompanying pro-formas or links to additional information. There is no ‘clear evidence’ provided in the Council’s supply report to justify the inclusion of major sites without detailed consent in the Council’s supply.

- 4.20 When reviewing the planning status of sites, we have come across some instances where updated information is available and have sought to provide a reasonable assessment of this to establish whether we consider it 'clear evidence' of delivery.

Lead in Times and Delivery Rates

- 4.21 The Council does not provide an annual breakdown of anticipated delivery within Appendix 1 of the housing supply position statement, whilst some site specific breakdowns are provided in Appendix 2 this is grouped by total for some of the smaller settlements. It has not, therefore been possible to review whether appropriate lead in times have been allowed for or whether annual delivery rates are reasonable for all sites included within the supply.
- 4.22 There is also no commentary provided by the Council on assumptions underpinning delivery rates, and it is worth noting that in recent years average annual delivery rates have slowly increased from previous average norms but current market and economic conditions will likely have an impact on completion rates, at least in the short term. However, for the purpose of assessment we have not sought to make adjustments to lead in times or delivery rates.

Small Sites (0-9 Homes)

- 4.23 The Council's position statement and supply tables in Appendix 1 includes all known sites of 1 or more homes. The nature of small scale development is that it is typically undertaken by small or medium developers, or even private individuals, rather than housebuilders. It is not unusual or uncommon for consents to lapse before they are implemented, or for revised applications to be progressed.
- 4.24 We are aware of several local authorities who consider it appropriate to apply a non-implementation or lapse rate to certain components of supply, so as not to overestimate the number of units that are likely to come forward. This is particularly appropriate where an authority has some local data on historic lapse rates. Examples of deductions are as follows:
- Stroud apply a non-implementation rate of 22% to all un-allocated small sites (9 dwellings or less);
 - Somerset West and Taunton apply a lapse rate of 10% to all small sites;
 - Cornwall apply a 10% discount to all small sites;
 - South Somerset apply a 5% non-implementation rate to the total of all sites (large and small) included in the Council's supply;
 - Malvern Hills District Council apply a 5% lapse rate to the total identified supply from all sources (large and small).
- 4.25 Whilst this review has focused on major development (sites with 10 or more homes) on an individual basis, we do consider it appropriate to apply a reasonable lapse rate to minor consents. Details on this are set out in table 4.2 later in this Section.

Assessment of the Council's Supply

4.26 We have reviewed all of the sites listed within the Council's trajectory, with a more detailed review of the sites for major development. The results of this initial assessment are summarised in the table below where we have extracted a summary of all sites where we consider the Council has failed to provide the clear evidence necessary to demonstrate that homes will be delivered on these sites within the next five years. Our findings, including where we consider that reductions in supply should be made, are provided in the commentary column.

Table 4.2: Disputed Sites

Site	Council Supply	Turley Supply	Difference in Delivery	Commentary
Lower Bryanston Farm, Blandford St Mary	75	0	-75	Outline permission is in place (for up to 80 homes under reference 2/2017/1919/OUT), however there is no detailed consent in place for any residential units on this site. A reserved matters application for 75 units is pending determination (submitted by Taylor Wimpey), however there are unresolved objections to the application including from the Urban Design team, and the highways team, the responses will require amendments to the scheme in order to be resolved. The Council has not provided the necessary clear evidence that completions will be delivered in the five year period on this site.
Ham Farm and Newhouse Farm	299	0	-299	Outline permission is in place (for up to 961 homes under reference 2/2018/0036/OUT), however there is no detailed consent in place for any residential units on this site. There are three reserved matters applications pending determination however there are unresolved objections on each. P/RES/2022/07898 for 280 homes (submitted by Places for People) has been pending since December 2022 however there are recent (July 2023) unresolved objections from the Urban Design team, the landscape officer and the tree officer. P/RES/2023/02376 for 34 homes (submitted by Redrow Homes) has been pending determination since May 2023 and has current objections from Urban Design, and the landscape team. P/RES/2022/04960 for 108 homes (submitted by Redrow Homes) has been pending since August 2022 and has a holding objection from the Lead Local Flood Authority (October 2023) and it is not clear whether the objections raised by landscape and urban design officers in 2022 have yet been resolved. The Council has not provided the necessary clear evidence that completions will be delivered in the five year period on this site.
Site 1: Land east of Franwill Industrial Estate	15	0	-15	A full application is pending determination for up to 15 homes under reference P/FUL/2020/00411. This has been pending since February 2023. There is an objection from the waste team and queries and requests for additional information from the highways team. There has also been no new documents or comments on the

Site	Council Supply	Turley Supply	Difference in Delivery	Commentary
				application page since March 2023. There is no detailed consent in place for any residential units on the site. The Council has not provided the necessary clear evidence that completions will be delivered in the five year period on this site.
Small Sites	327	294	-33	The Council's small site commitments are set out in tables 6.1 and 7.1 of the Supply Report (114 units from minor sites at the 4 main towns and 244 at Stalbridge, the 18 villages and the countryside). Of these, 327 are predicted to deliver in the current 5 year period. The nature of small scale development is that it is typically undertaken by small and medium developers, or even private individuals, rather than national housebuilders. It is not unusual or uncommon for consents to lapse before they are implemented, or for revised applications to be progressed. A 10% discount is more realistic and has been applied.
Total	716	294	-422	

- 4.27 The above reductions are based on our review and the best available evidence at the time of writing. However, it is clear that there are sites within the Council's claimed supply where there is no detailed consent in place and where the onus lies with the Council to provide clear evidence that homes will be delivered within five years.
- 4.28 Our assessment of supply suggests that 422 homes should be removed from the Council's supply. Our calculation is that the deliverable supply is **1,825 homes**.
- 4.29 Based on the above reductions the Council's revised supply position would be as set out below.

Table 4.3: Revised Five Year Supply Calculation

Step	Stage	Calculation
A	Annual Requirement	373 dpa
B	Five Year Requirement (A x 5)	1,865
C	Requirement +20% Buffer (B x 1.2)	2,238
D	Turley Assessed Supply	1,825
E	5 Year Calculation	4.07 years
F	Shortfall	-413

- 4.30 Even if the Council's HDT results are to be accepted, which we dispute, the supply figure would be 4.66 years, with a shortfall of 133 homes. This is shown in Table 4.4 below.

Table 4.4: Revised Five Year Supply Calculation with 5% buffer

Step	Stage	Calculation
A	Annual Requirement	373 dpa
B	Five Year Requirement (A x 5)	1,865
C	Requirement +5% Buffer (B x 1.05)	1,958
D	Turley Assessed Supply	1,825
E	5 Year Calculation	4.66 years
F	Shortfall	-133

5. Conclusions

- 5.1 The Council claim to have a supply of 5.74 years, with sites projected to deliver a total claimed deliverable supply of 2,247 homes. This is a surplus of 289 homes.
- 5.2 We have undertaken an assessment of the Council's latest position statement and suggest there is a lack of clear evidence to include several sites within the supply. We consider that several sites do not meet the test of being deliverable for five year supply purposes and that the quantum of deliverable supply should be reduced by circa 422 homes.
- 5.3 We also consider that the Council's approach to calculating its own updated HDT results is not in line with the guidance in the NPPF which is clear that the government's published position should be used until a new update is published.
- 5.4 Based on our calculations the actual supply figure is 4.07 years, with a deliverable supply of 1,825 homes. This is a shortfall of 413 homes.
- 5.5 It is clear that the North Dorset area of Dorset Council cannot demonstrate a five year housing land supply in accordance with paragraph 74 of the NPPF.

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