

Proof of Evidence of Ben Pycroft re: Housing Land Supply

For Angle Property (RLP Shepperton) LLP | 23-532

Residential development at Bugle Nurseries, 171 Upper Halliford Road,
Shepperton, TW17 8SN



Project: 23-532
Site Address: Bugle Nurseries, 171 Upper Halliford Road, Shepperton, TW17 8SN
Client: Angle Property (RLP Shepperton) LLP
Date: 31 October 2023
Author: Ben Pycroft

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1. Introduction

- 1.1 This proof of evidence is submitted on behalf of Angle Property (RLP Shepperton) LLP (i.e. the Appellant) in support of its appeal against the decision of Spelthorne Borough Council to refuse to grant planning permission for an outline application with approval sought for scale, access and siting, with details of appearance and landscaping reserved, for the demolition of existing buildings and structures, removal of waste transfer facility and the redevelopment of the site for up to 80 residential units and the provision of open space and a play area, plus associated works for landscaping, parking areas, pedestrian, cycle and vehicular routes at Bugle Nurseries, 171 Upper Halliford Road, Shepperton (LPA ref: 22/01615/OUT, PINS ref: APP/Z3635/W/23/3325635).
- 1.2 This proof of evidence addresses matters relating to the Council's five year housing land supply (5YHLS). It should be read alongside the proof of evidence of Mr Ledwidge, which addresses all other planning matters in relation to this case.
- 1.3 I have addressed the Council's 5YHLS within the context of the current Framework. Should a revised Framework be published prior to the determination of the appeal, then I respectfully request the opportunity to submit further evidence in relation to 5YHLS on behalf of the Appellant.

Qualifications

- 1.4 I am Benjamin Michael Pycroft. I have a B.A. (Hons) and postgraduate diploma in Town Planning from the University of Newcastle-upon-Tyne and am a member of the Royal Town Planning Institute. I am a Director of Emery Planning, based in Macclesfield, Cheshire.
- 1.5 I have extensive experience in dealing with housing supply matters and have prepared and presented evidence relating to five year housing land supply calculations at several Local Plan examinations and over 50 public inquiries across the country.
- 1.6 In April 2023, I prepared evidence on the Council's 5YHLS for an appeal made by Future High Street Living (Staines) against the decision of the Council to approve planning permission for the demolition of the former Debenhams store and redevelopment to provide 226 dwellings at 37-45 High Street, Staines-upon-Thames¹. The appeal was heard at a public inquiry which took place in May 2023. For that appeal, it was agreed that at 1st April 2022 the deliverable supply was within the range of 2.78 to 3.52 years. As a result, both parties invited the Inspector to determine the appeal having regard to that range. Both parties also agreed that the precise position within the bracket does not alter the weight the respective

¹ PINS ref: 3312440 – decision issued 13th July 2023 – core document 10.14



parties gave to the benefit of providing new homes. In those circumstances the parties agreed it was not necessary for the Inspector to make a finding as to where within the bracket the housing land supply fell for the purpose of that appeal. On this basis, once the Inquiry opened, the Inspector in that case confirmed that they did not need to hear the evidence presented on 5YHLS.

- 1.7 I understand my duty to the inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct and comprise my true professional opinions which are expressed irrespective of by whom I am instructed.
- 1.8 I provide this proof of evidence, a summary proof of evidence and a set of appendices. I also refer to several core documents and the Statement of Common Ground in relation to housing land supply.

Summary

Five year housing land supply

- 1.9 From the outset, the Council accepts that it cannot demonstrate a 5YHLS. Whilst the Council's latest published statement claims that the deliverable 5YHLS is 3,424 dwellings equating to 4.6 years, for the appeal at the former Debenhams store described above, the Council significantly revised its position and considered that it could demonstrate a deliverable 5YHLS at 1st April 2022 of 2,615 dwellings, which equated to 3.52 years (a shortfall of 1,093 dwellings). On 16th October 2023, the Council confirmed that for this current appeal, the base date remains at 1st April 2022 and that it considers it has a 3.52 year supply.
- 1.10 The following matters in relation to 5YHLS are agreed:
- The base date for the assessment is 1st April 2022 and the five year period is to 31st March 2027;
 - The 5YHLS should be measured against the capped local housing need figure of 618 dwellings per annum;
 - A 20% buffer should be applied; and
 - A 5YHLS cannot be demonstrated.
- 1.11 The extent of the shortfall in the 5YHLS is not agreed. As above, the Council considers that it can demonstrate a 5YHLS of 2,615 dwellings. I have assessed the Council's 5YHLS and conclude that 542 dwellings should be removed from the following sites:



Table 1.1 – Disputed sites in the Council’s 5YHLS

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
1	18/00995	5-7 Clarence Street	5	5	0	5
2	18/01267	West Wing, Council offices	25	25	0	25
3	18/01228	Ashford Depot	37	37	0	37
4	19/00102	HMRC, Forum House, 14 Thames Street	40	40	0	40
5	18/01749	61-63 High Street, Staines	5	5	0	5
6	21/01220	Magna House, 18-32 London Road, Staines	26	26	0	26
7	19/01069	Shepperton House, 2-4 Green Lane, Shepperton	13	13	0	13
8	23/00098	34-36 OAST House	184	184	0	184
9	23/00388	Ashford Multi- storey car park	45	45	0	45
10	23/00865	Land at Woodthorpe Road and Station Approach, Ashford	40	40	0	40
11	23/00724	Benwell House, Green Street	35	35	0	35
12	SP23/00557/SCC	Sunbury Fire Station	12	12	0	12

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
13	23/00058	White House, Ashford	17	17	0	17
14	AS1/003	Staines Fire Station	50	50	0	50
15	AT3/020	Fir Tree Place, Church Road	8	8	0	8
			Total	542	0	542

1.12 I therefore conclude that the 5YHLS at 1st April 2022 is 2,073 dwellings (i.e. 2,615 – 542 = 2,073). Against the Local Housing Need and a 20% buffer, this equates to 2.79 years and a shortfall of 1,635 dwellings as shown in the following table:

Table 1.2 – Spelthorne’s 5YHLS at 1st April 2022

		Council	Appellant
	Requirement		
A	Annual housing requirement	618	
B	Five year housing requirement (A X 5 years)	3,090	
C	20% buffer (20% of B)	618	
D	Five year supply to be demonstrated at 1 st April 2022 (B + C)	3,708	
E	Annual requirement plus 20% (D / 5 years)	742	
	Supply		
F	5YHLS at 1 st April 2022	2,615	2,073
G	Supply in years (F / E)	3.52	2.79
H	Undersupply against 5 year housing requirement and buffer	-1,093	-1,635



- 1.13 Whilst the shortfall in the 5YHLS is not agreed, it is agreed that the deliverable supply is within the range of 2.79 to 3.52 years. As a result, both parties invite the Inspector to determine the appeal having regard to that range within the context of the current Framework. As above, should a revised Framework be published prior to the determination of the appeal then both parties reserve the right to submit additional representations on 5YHLS.
- 1.14 The implication of this is addressed by Mr Ledwidge.



2. Planning policy context

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration.

Development plan context

- 2.2 The existing development plan comprises the Core Strategy and Policies DPD (adopted February 2009), the Allocations DPD (adopted 17th December 2009) and the saved policies of the Spelthorne Local Plan (2001). The conformity of the appeal proposals with the policies in the development plan, whether the most important policies for determining the appeal are up to date and the weight to be given to those policies are addressed by Mr Ledwidge.

Other material considerations

Spelthorne Statement of Five Year Housing Land Supply (February 2023)

- 2.3 Spelthorne's housing land supply position was only published in February 2023. It has a base date of 1st April 2022 but predicts the position at 1st April 2023. As set out in the introduction to this statement, the published statement claims that the deliverable 5YHLS is 3,424 dwellings, which equates to 4.6 years.
- 2.4 The statement has effectively been superseded by the Council's revised position on 5YHLS for the purposes of this appeal as described in the introduction to this proof of evidence. The main difference between the Council's published position and the position it has adopted for the purposes of this appeal is because the Council no longer includes many sites that do not have planning permission in the 5YHLS.

National Planning Policy and Guidance

- 2.5 The latest version of the Framework was updated in September 2023. The relevant sections of the Framework in relation to my proof of evidence are:
- Section 5: Delivering a sufficient supply of homes, including:
 - Paragraph 60, which refers to the Government's objective of significantly boosting the supply of homes;



- Paragraph 61, which explains that the minimum number of homes needed should be informed by a local housing need calculated using the standard method set out in the PPG;
- Paragraph 71, in relation to an allowance for windfall sites;
- Paragraph 74, which explains which figure the five year housing land supply should be measured against and which buffer applies;
- Paragraph 75, which explains the circumstances in which a five year housing land supply can be demonstrated through a recently adopted plan or subsequent annual position statement; and
- Paragraph 76, in relation to Housing Delivery Test Action Plans; and
- Annex 2: Glossary, including:
 - The definition of “deliverable” on page 67; and
 - The definition of “windfall sites” on page 74.

2.6 The relevant chapters of the PPG in relation to my proof of evidence are:

- Chapter 2a – Housing and economic needs assessment;
- Chapter 3 – Housing and economic land availability assessments;
- Chapter 61 – Plan-making; and
- Chapter 68 – Housing supply and delivery.

Emerging development plan

2.7 The Council is preparing a new Local Plan which will replace the existing Core Strategy and Policies DPD. It has a proposed plan period of 2022 to 2037. The draft Local Plan was submitted for examination on 25th November 2022 and hearing sessions commenced on 23rd May 2023. The examination is currently paused. The latest position is set out by Mr Ledwidge.

2.8 I refer to the emerging Local Plan and the evidence base in my proof of evidence, including the document called “Officer Site Assessments – Draft Local Plan Allocations” (June 2022).



3. Agreed matters re: 5YHLS

3.1 As set out in the SoCG on 5YHLS, the following matters are agreed in relation to 5YHLS:

The base date and the 5YHLS period

3.2 The base date is the start date for the five year period for which both the requirement and supply should relate. It is agreed that the relevant base date for assessing the 5YHLS the purposes of this appeal is 1st April 2022 and the relevant 5YHLS period is to 31st March 2027.

The figure the 5YHLS should be measured against

3.3 Paragraph 74 of the Framework states that the five year housing land supply should be measured against the housing requirement set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old. Footnote 39 of the Framework explains that the 5YHLS will continue to be measured against the adopted housing requirement where it is over five years old but it has been reviewed and found not to require updating.

3.4 The policies in the adopted development are over five years old and have been reviewed and found to require updating. Therefore, it is agreed that in accordance with paragraph 74 and footnote 39 of the Framework, the five year housing land supply should be measured against the local housing need as calculated by the standard method set out in paragraph 2a-004 of the PPG.

3.5 It is agreed that the local housing need is capped at 618 dwellings per annum.

The buffer

3.6 The Housing Delivery Test (HDT) results for 2021 were published on 14th January 2022. The 2021 result for Spelthorne is summarised in the table below:



Table 3.1 – Published 2021 Housing Delivery Test Results

	Number of homes required				Number of homes delivered				HDT %
	2018-19	2019-20	2020-21	Total	2018-19	2019-20	2020-21	Total	
Spelthorne	599	552	403	1,554	337	228	508	1,073	69%

- 3.7 As can be seen from the table above, Spelthorne only delivered 1,073 homes over the last three years against the “number of homes required” over the same period of 1,554 dwellings. This results in a HDT measurement of 69% and means that the Council has failed the HDT. This means that the 20% and the presumption in favour of sustainable development applies (as well as due to a 5YHLS shortfall) and the Council must provide an action plan.
- 3.8 Based on the completions in 2021/22 of 323 dwellings, and a local housing need in the same year of 611 dwellings, the Council’s HDT result is not expected to improve when the 2022 HDT results are published.



4. Matters not agreed re: 5YHLS - the extent of the deliverable 5YHLS

4.1 The extent of the deliverable 5YHLS is not agreed. The Council considers that its deliverable 5YHLS at 1st April 2022 equates to 2,615 dwellings² comprising of:

- 1,270 dwellings on 28 sites which were under construction at 1st April 2022;
- 751 dwellings on 22 sites that had planning permission but were not under construction at 1 April 2022;
- 201 dwellings on 2 sites that do not have planning permission but have applications pending determination;
- 190 dwellings on 6 sites that do not have planning permission at 1st April 2022; and
- 202 dwellings on small sites with a capacity of less than 5 dwellings. This is based on an average delivery rate of 40.5 dwellings on such sites over the past 11 years.

4.2 I have assessed the Council's 5YHLS and conclude that 542 dwellings should be removed for the reasons discussed below and in the following section of my proof of evidence.

Sites under construction at 1st April 2022

4.3 I have assessed the 28 sites which were under construction at 1st April 2022 and make the following deductions:

- 5-7 Clarence Street – this site had a prior approval for the change of use of the first and second floors from office (B1) to 5 no. residential flats (C3), which was approved on 22nd August 2018 (LPA ref: 18/00995). However, the prior approval required the completion of the 5 dwellings by 22nd August 2021³. Therefore, these dwellings had been completed long before the base date;
- West Wing, Council's Offices – this site had a prior approval for the change of use from office (B1a) to Residential (C3) comprising 25 units (LPA ref: 18/01267). However, the prior approval required the completion of the 25 dwellings by 22nd October 2021⁴ and I understand that these dwellings were completed before the base date and formally opened in December 2021⁵;

² Appendix EP12

³ Appendix EP2 – 5-7 Clarence Street decision notice

⁴ Appendix EP3A – West Wing decision notice

⁵ Appendix EP3B – Press article re: opening of West Wing



- Ashford Depot, Poplar Road, Ashford – this site had planning permission for 37 dwellings and was known as “the Gatehouse”. However, I understand that the development was completed before 1st April 2022⁶ and therefore should not be included in the 5YHLS;
- HM Revenue & Customs, Forum House, 14 Thames Street – this site had prior approval for the change of use from office (B1) to 40 no. residential flats (LPA ref: 19/00102/PDO). However, the prior approval required the completion of the 40 dwellings by 27th February 2022⁷ and therefore these dwellings must have been completed before the base date and should not be included in the 5YHLS; and
- 61-63 High Street, Staines – this site had prior approval for the change of use of the first and second floor from office (B1) to residential (C3) comprising 5 no. flats (LPA ref: 18/01749). However, the prior approval required the completion of the 5 dwellings by 12th February 2022⁸ and therefore these dwellings must have been completed before the base date and should not be included in the 5YHLS.

4.4 This results in the deduction of 112 dwellings in the Council’s 5YHLS as shown in the following table:

Table 4.1 – Deductions on sites which the Council claims were under construction at 1st April 2022

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
1	18/00995	5-7 Clarence Street	5	5	0	5
2	18/01267	West Wing, Council offices	25	25	0	25
3	18/01228	Ashford Depot	37	37	0	37
4	19/00102	HMRC, Forum House, 14 Thames Street	40	40	0	40
5	18/01749	61-63 High Street, Staines	5	5	0	5
						112

⁶ Appendix EP4 – Evidence re: Gate House completion in 2021.

⁷ Appendix EP5 – HMRC decision notice

⁸ Appendix EP6 – 61-63 High Street decision notice

Sites with planning permission but not under construction at 1st April 2022

4.5 I have assessed the 22 sites which were under construction at 1st April 2022 and make the following deductions:

- Magna House, 18-32 London Road, Staines. This site has prior approval for the conversion of the building to 26 dwellings, which was approved on 19th September 2021. However, there is no realistic prospect that this will be implemented and completed by September 2024 because the building has been recently comprehensively refurbished and is being marketed for offices. Indeed, according to the marketing particulars, the ground floor has now been let to Tax Systems⁹.
- Shepperton House, 2-4 Green Lane, Shepperton. Planning permission was granted to extend the building to include 13 dwellings, which was approved on 17 October 2019. An application has been made to discharge conditions 10 and 16 of the planning permission, however, it is unclear from the Council's online planning register whether these conditions have been discharged. Conditions 3, 4, 5, 6, 7, 8, 9, 13 and 17 all still need to be discharged, which shows a lack of progress in progressing with the development.

4.6 This results in the deduction of 39 dwellings in the Council's 5YHLS as shown in the following table:

Table 5.2 – Deductions on sites with planning permission at 1st April 2022

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
6	21/01220	Magna House, 18-32 London Road, Staines	26	26	0	26
7	19/01069	Shepperton House, 2-4 Green Lane, Shepperton	13	13	0	13
						39

4.7 Whilst the Council's previous 5YHLS position included the following site, it is agreed that this site should not be included in the 5YHLS and the Council has reduced its supply figure accordingly:

- 1 London Road, Staines. This site has prior approval for the conversion of the offices to 77 apartments, which was approved in September 2021 (LPA ref: 21/01274). However, there is no realistic prospect that this will be implemented and completed by September 2024 because the building has recently had a comprehensive refurbishment to the communal areas

⁹ Appendix EP7 – Marketing particulars for Magna House

and is being marketed for offices. Indeed, according to the website for the building, part of the second floor and all of the fourth floor have been let¹⁰.

¹⁰ Appendix EP8 – Marketing particulars for One London Road



5. Sites without planning permission

- 5.1 Whilst the Council's published position statement includes 1,508 dwellings on 18 sites that did not have planning permission on 1st April 2022, the Council accepts for the purposes of this appeal that 10 of those sites are not deliverable.
- 5.2 The Council now includes 391 dwellings on 8 sites that did not have planning permission on 1st April 2022 and do not have planning permission now. Some of these sites fall within category b) and some of these sites are in neither category a) or b) of the definition of deliverable as set out in the Annex to the Framework on page 66, which states:

"Deliverable: 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."

- 5.3 Paragraph 68-007 of the PPG provides some examples of the types of evidence, which could be provided to support the inclusion of sites with outline planning permission for major development and allocated sites without planning permission. It states:

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

- have outline planning permission for major development;
- are allocated in a development plan;
- have a grant of permission in principle; or
- are identified on a brownfield register.

Such evidence, to demonstrate deliverability, may include:



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

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

- 5.4 Whilst the previous definition of “deliverable” in the 2012 Framework considered that all sites with planning permission and allocations should be considered deliverable and other sites such as sites identified in the Strategic Housing Land Availability Assessment (SHLAA) could also be considered deliverable, the revised definition in the 2021 Framework is clear that only sites with detailed consent for major development should be considered deliverable and other sites should only be considered deliverable where there is clear evidence that housing completions will begin in five years.
- 5.5 As above, the PPG has been updated to provide some examples of the type of evidence which may be provided to be able to consider that sites with outline planning permission for major development, allocated sites and sites identified on a brownfield register are deliverable.

Relevant appeal decisions

- 5.6 There have been several appeal decisions which have considered the definition of “deliverable” as set out in the Framework and whether “clear evidence” has been provided for the inclusion of sites which only have outline planning permission for major development or are allocated without planning permission. Whilst each appeal has been determined on a case by case basis on the evidence before the decision-maker, several themes have arisen in appeal decisions, which I discuss below.

The absence of any written evidence from the developer / promoter

- 5.7 Where no evidence has been provided for the inclusion of category b) sites, the Secretary of State and Inspectors have concluded that these sites should be removed. For example:



- In an appeal decision regarding land off Audlem Road, Stapeley, Nantwich and land off Peter De Stapeleigh Way, Nantwich¹¹, the Secretary of State removed 301 dwellings from Cheshire East Council's supply from sites including: *"sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement"* (paragraph 21 of the decision letter dated 15th July 2020);
- In an appeal decision regarding land to the south of Cox Green Road, Surrey¹² an Inspector removed 563 dwellings on 24 sites from Waverley Council's supply because the Council had not provided any evidence for their inclusion (paragraphs 22 to 24 of the appeal decision dated 16th September 2019);
- In an appeal decision regarding land at Station Road, Stalbridge, North Dorset¹³ an Inspector removed 2 large sites from North Dorset's supply (references A02 and A04) because the Council had not provided any up to date information from the developers for these sites and applications for reserved matters had not been made (paragraphs 53 and 57); and
- In an appeal decision regarding land within the Westhampnett / North East Strategic Development Location, North of Madgwick Lane, Chichester¹⁴, an Inspector removed the second phase of a wider site that is under construction on the basis that an application for reserved matters had not been made for phase 2 and the fact that a major housebuilder was progressing phase 1 was not in itself clear evidence (paragraph 82).

The most up to date evidence

5.8 Paragraph 68-004 of the PPG¹⁵ explains that for decision-taking purposes, an authority will need to be able to demonstrate a five year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

- *"using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);*
- *'confirming' the 5 year land supply using a recently adopted plan or through a subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework)."*

5.9 In this case, the Council's five year housing land supply has not been confirmed through a recently adopted plan or an annual position statement and therefore the latest available evidence should be used. As above, paragraph 68-007 of the PPG also states that *"robust, up to date evidence needs to be*

¹¹ PINS refs: 2197532 and 2197529 – core document 10.15

¹² PINS ref: 3227970 – core document 10.16

¹³ PINS ref: 3284485 – core document 10.17

¹⁴ PINS ref: 3270721 – core document 10.18

¹⁵ Paragraph: 004 Reference ID: 68-004-20190722: *"How can an authority demonstrate a 5 year supply of deliverable housing sites?"*



available to support the preparation of strategic policies and planning decisions". It also states that the "current" planning status of a site is one example of the type of evidence that could be used to support the inclusion of category b) sites. Therefore, the latest available evidence should be used but this is only in relation to sites already in the supply.

- 5.10 In an appeal regarding land on the east side of Green Road, Woolpit¹⁶, the Inspector found Mid Suffolk Council's approach in publishing its AMR and then retrospectively seeking evidence to justify its position "wholly inadequate". Paragraph 70 of the appeal decision states:

"the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published."

- 5.11 However, evidence can post date the base date to support the sites in the deliverable supply and not seek to introduce new sites. In an appeal regarding land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands (Milton Keynes)¹⁷, the Secretary of State agreed with Inspector Gilbert-Woolridge that the latest available evidence should be used when considering deliverability. Paragraph 12 of the Secretary of State's decision letter dated 25th June 2020 states:

"For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11)".

- 5.12 Similarly, in a decision regarding land off Darnhall School Lane, Winsford¹⁸, the Secretary of State agreed with Inspector Middleton that it is appropriate to take into account information received after the base date if it affects sites included in the deliverable supply¹⁹.

- 5.13 This means that where sites have not progressed as the Council's trajectory claimed at the time the position statement was published, the supply should be reduced. In the Audlem Road appeal²⁰, the Secretary of State removed from Cheshire East Council's supply;

"a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress". (paragraph 21 of the Decision Letter dated 15th July 2020)

¹⁶ PINS ref: 3194826 – core document 10.19

¹⁷ PINS ref: 3169314 – core document 10.20

¹⁸ PINS ref: 2212671 – core document 10.21

¹⁹ Paragraph 344 of the Inspector's Report and paragraph 15 of the Decision Letter.

²⁰ PINS refs: 2197532 and 2197529 – core document 10.15



- 5.14 Cheshire East Council's Housing Monitoring Update (HMU) had a base date of 31st March 2019 and was published in November 2019. Representations by both parties on the HMU were received with the final comments received on 12th February 2020 (DL paragraph 7). Therefore, whilst the written evidence for this site explained a planning application would be made on this site in August 2019 because the application was not forthcoming by the time the decision was made and no other evidence of progress had been provided, the Secretary of State removed the site from the supply.

The form and value of the evidence

- 5.15 In the Woburn Sands appeal decision referred to above, the Secretary of State agreed with the Inspector that a proforma can, in principle, provide clear evidence of a site's deliverability (please see paragraph 12 of the decision letter and paragraphs 12.13 to 12.15 of the Inspector's Report). However, the evidential value of the written information is dependent on its content. The Secretary of State and Inspectors have concluded that it is not simply sufficient for Councils to provide agreement from landowners and promoters that their intention is to bring sites forward. The evidence needs to provide a realistic prospect that housing will be delivered on the site within five years.
- 5.16 For example, in allowing an appeal for 120 dwellings at land east of Gleneagles Way, Hatfield Peverel²¹, the Secretary of State found Braintree Council could not demonstrate a five year housing land supply.
- 5.17 Braintree Council claimed that it could demonstrate a 5.29 year supply. In determining the appeal, the Secretary of State concluded that the Council could only demonstrate a 4.15 year supply. The reason for this is set out in paragraph 41 of the decision letter (page 7), which states:

"Having reviewed the housing trajectory published on 11 April, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission do not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site within five years. He has therefore removed ten sites from the housing trajectory"

- 5.18 The ten removed sites are listed in a table provided at Annex D on page 24 of the Secretary of State's decision letter. Of the ten sites removed from Braintree's supply, 9 had outline planning permission and the remaining site was an allocated site with a hybrid planning application pending determination. For these sites, Braintree Council had submitted completed forms and emails from landowners, developers and their agents providing the timescales for the submission of reserved matters applications and anticipated build rates. However, the Secretary of State removed these sites because he did not consider

²¹ PINS ref: 3180729 – core document 10.22



they met the definition of “deliverable” as set out in the Framework. I append the proformas and emails provided by Braintree at **EP11**. Whilst they were rejected by the Secretary of State as being clear evidence, they are relevant because they provide more evidence than that which has been provided by Spelthorne for the disputed sites without planning permission.

5.19 As part of its case in seeking to defend an appeal against its decision to refuse to grant outline planning permission for up to 140 no. dwellings at land off Popes Lane, Sturry²², Canterbury City Council claimed that it could demonstrate a 6.72 year supply. For there to be a shortfall in the supply, Canterbury Council claimed that some 1,654 dwellings (out of 6,455 dwellings) would have to be removed from the “deliverable” supply.

5.20 The Inspector, however, found that the Council could not demonstrate a five year housing land supply. The Inspector concluded that the deliverable supply was 4,644 dwellings, which equates to 4.8 years. The reason why the Inspector concluded that the deliverable supply was 1,811 dwellings (28%) less than the Council claimed was because he found that 10 sites should be removed from the supply because:

“there is insufficient clear evidence to show that they meet the NPPF’s definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.” (paragraph 23)

5.21 In that case, Canterbury Council had provided statements of common ground between the Council and the developer or landowner to support the inclusion of several of the disputed sites. However, the Inspector found that the statements of common ground did not demonstrate that the development prospect was realistic. Paragraph 23 of the appeal decision states:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer’s or landowner’s stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.”

5.22 Similarly, as part of its case in seeking to defend an appeal made by Parkes Ltd against its decision to refuse to grant outline planning permission for up to 53 dwellings at land to the south of Cox Green

²² PINS ref: 3216104 – core document 10.23



Road, Rudgwick²³, Waverley Council claimed it could demonstrate a supply of 5,708 dwellings, which equated to just under 5.2 years against its housing requirement and buffer.

- 5.23 The Inspector concluded that the supply should be reduced by 928 dwellings and therefore that Waverley Council could only demonstrate a “deliverable” supply of 4.3 years. The reasons why the Inspector considered the supply should be reduced are set out in paragraphs 10 to 27 of the appeal decision. I note that whilst Waverley Council’s assumptions of delivery on a site at Dunsfold Park relied on estimated numbers of delivery from a pro-forma returned by the site’s lead developer, the Inspector however considered that the details contained within it were “scant”. There was no explanation as to how the timings of delivery could be achieved including the intended timescales for submitting and approving reserved matters, applications of discharge of conditions, site preparation and installing infrastructure. The Inspector therefore did not include the site.
- 5.24 In an appeal for up to 181 dwellings at land at Caddywell Lane / Burwood Lane, Great Torrington, Devon²⁴, Inspector Harold Stephens concluded that Torridge Council could not demonstrate a five year housing land supply. Paragraphs 56 and 57 of the appeal decision state:

“56. I have also had regard to the updated 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 indicates 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.

57. 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 the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma 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)

²³ PINS ref: 3227970 – core document 10.16

²⁴ PINS ref: 3238460 – core document 10.24



5.25 Similarly, in an appeal decision dated 25th June 2021 regarding an appeal made by Senior Living (Sonning Common) Ltd and Investfront Ltd against the decision of South Oxfordshire District Council to refuse to grant planning permission for a care village of up to 133 units at Little Sparrows, Sonning Common, Oxfordshire²⁵, the Inspector found that South Oxfordshire could not demonstrate a deliverable supply because it had not provided the necessary clear evidence. Paragraphs 20 and 21 of the appeal decision reflect paragraphs 56 and 57 of the Great Torrington appeal decision above.

5.26 Finally, in an appeal decision dated 25th August 2022 regarding an appeal made by Salter Property Investments Ltd against the decision of Exeter City Council to refuse to grant outline planning permission for up to 93 dwellings at land off Spruce Close, Exeter²⁶, the Inspector found:

- The pro-formas used by Exeter were undated, unsigned and deficient (paragraph 39);
- That 2 sites with outline planning permission and no reserved matters applications pending, and no clear evidence for their inclusion should be removed (paragraphs 40 and 41); and
- That even where reserved matters application had been made, where those applications are subject to outstanding objections and there is no written agreement with the developer, the sites should not be included because no clear evidence had been provided (paragraphs 42 and 43).

5.27 In summary, the above appeal decisions found that sites with outline planning permission for major development and allocated sites without planning permission should not be included in the deliverable supply where the respective Councils had failed to provide the clear evidence required. I now set out my assessment of the Council's supply.

Sites with planning applications pending determination

5.28 The Council includes five sites which do not have planning permission but have applications pending determination, which I dispute as follows:

²⁵ PINS ref: 3265861 – core document 10.25

²⁶ PINS ref: 3292721 – core document 10.26



Table 5.1 – Disputed sites with planning applications pending determination

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
8	23/00098	34-36 OAST House	184	184	0	184
9	23/00388	Ashford Multi-storey car park	45	45	0	45
10	23/00865	Land at Woodthorpe Road and Station Approach, Ashford	40	40	0	40
11	23/00724	Benwell House, Green Street	35	35	0	35
12	SP23/00557/SCC	Sunbury Fire Station	12	12	0	12
						316

5.29 From the outset, all sites in Table 5.1 (except Sunbury Fire Station) are draft allocations in the emerging Local Plan. However, it is not known whether the applications will be approved. I note that the Council has also refused to grant planning permission on other draft allocations in the emerging Local Plan. Two examples are:

- Benwell House – this site is owned by the Council. An application for 39 dwellings was refused (contrary to officer recommendation) on 15th October 2021 (LPA ref: 19/01211/FUL) for three reasons relating to height / bulk / massing and proximity to existing residential dwellings, unacceptable loss of TPO trees and impact on the street scene / character of the area; and
- Former Debenhams Store, 37 – 45 High Street, Staines. An application for 226 dwellings was refused on 6th June 2022 (LPA ref: 21/01772/FUL) for three reasons relating to harm to the significance of heritage assets, detrimental impact on the character and appearance of the area and insufficient affordable housing.

5.30 Notwithstanding this, there is an absence of clear evidence for the inclusion of these five sites in the deliverable supply for the reasons set out in appendix **EP1** and therefore they should be removed from the 5YHLS. My appendix EP1 sets out my comments on these disputed sites and the comments I have received from the Council (as appended at EP12).

Sites without planning permission or an application

5.31 The Council includes 3 sites which do not have planning permission or applications pending determination, which I dispute as follows:

Table 5.2 – Disputed sites without planning permission or applications pending determination

	LPA ref	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
13	23/00058	White House, Ashford	17	17	0	17
14	AS1/003	Staines Fire Station	50	50	0	50
15	AT3/020	Fir Tree Place, Church Road	8	8	0	8
						75

5.32 The reasons why I dispute the inclusion of these sites are set out in appendix **EP1**. However, in summary, the Council has not provided the clear evidence for the inclusion of these sites in the 5YHLS.



6. Conclusions in relation to 5YHLS

6.1 In summary, I conclude that 542 dwellings should be removed from the Council's 5YHLS figure. I therefore conclude that the 5YHLS at 1st April 2022 is 2,073 dwellings (i.e. $2,615 - 542 = 2,073$). Against the local housing need and a 20% buffer, this equates to 2.76 years as shown in the following table:

Table 6.1 – Spelthorne's 5YHLS at 1st April 2022

		Council	Appellant
	Requirement		
A	Annual housing requirement	618	
B	Five year housing requirement (A X 5 years)	3,090	
C	20% buffer (20% of B)	618	
D	Five year supply to be demonstrated at 1 st April 2022 (B + C)	3,708	
E	Annual requirement plus 20% (D / 5 years)	742	
	Supply		
F	5YHLS at 1 st April 2022	2,615	2,073
G	Supply in years (F / E)	3.52	2.79
H	Undersupply against 5 year housing requirement and buffer	-1,093	-1,635

6.2 The implication of this is addressed by Mr Ledwidge.



