

Addendum Proof Of Evidence on Housing Need Appendix – Detailed Assessment of the Supply

On behalf of Persimmon Homes

Date: January 2024 | Pegasus Ref: P.1173

Appeal Ref: APP/M3835/21/3281813 | LPA Ref: AWDM/1264/20

Author: Neil Tiley BSc (Hons) Assoc RTPi





Document Management.

Version	Date	Author	Checked/ Approved by:	Reason revision	for
ROO2v1	03/01/2024	NT	NT	-	
ROO2v2	17/01/2024	NT	NT	Updated assessment LPA	5YLS of



Contents.

1. The five-year requirements.....	3
2. The deliverable supply	7
3. Category A sites.....	13
4. Category B sites.....	15
5. Sites outside of Category A or B.....	21
6. The total deliverable supply	23
7. The 5YLS positions.....	24

1. The five-year requirements

Housing requirements and housing needs

The adopted housing requirement

- 1.1 Footnote 79 of the NPPF disengages paragraph 76 of the NPPF when considering planning applications which were submitted prior to the publication of the NPPF on 19th December 2023, such as this. Accordingly, the current appeal is one of the other circumstances addressed within paragraph 77 of the NPPF which requires that the LPA identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing (a 5YLS).
- 1.2 Paragraph 77 of the NPPF requires that for the purposes of determining whether or not paragraph 11d of the NPPF is engaged through footnote 8, the 5YLS should be calculated against the adopted housing requirement where this is less than five years old as is the case in Worthing Borough.
- 1.3 Policy SS2 identifies a minimum housing requirement for 3,672 homes over the period 2020–36, or 230 per annum, and this therefore provides the appropriate measure for determining whether footnote 8 is engaged for 5YLS purposes.

The currency of the adopted housing requirement

- 1.4 The housing requirement was adopted on the premise that the LPA had unturned every stone¹ and having done so found that the adverse impacts of adopting a higher housing requirement would significantly and demonstrably outweigh the adverse impacts in accordance with paragraph 11b of the NPPF.
- 1.5 This is demonstrably misconceived, as is evident from the fact that within 10 months of adoption, the LPA has already identified capacity to sustainably deliver 449 more homes on large sites than it suggested could be sustainably delivered to the examining Inspector². The

¹ See paragraph 87 of the Inspector's Final Report (CDE37).

² Comprising 23 homes at 22 Lyndhurst Road, an additional 34 homes at the Former Beales Site, 9 homes at 21–23 Montague Street, 14 homes at Avila House, 9 homes at 34–36 Montague Street, an additional 69 homes at Lyndhurst Road, 35 homes at Horton Buildings, 8 homes at Kingswood Home, 8

premise upon which the adopted housing requirement was adopted is therefore no longer tenable, as the LPA now themselves acknowledge that there is a much greater capacity to accommodate development than was assumed to justify the constrained housing requirement. The consequence of this is that the adopted housing requirement is clearly out-of-date.

- 1.6 Furthermore, it will clearly be material that had the LPA properly unturned every stone, the housing requirement would be materially greater with the effect that there would be a materially greater five-year requirement and a materially reduced 5YLS. Indeed, the 5YLS as assessed against the adopted housing requirement, relies upon a now demonstrably unjustifiable level of constraints, with the effect that the 5YLS position is inflated compared to that which would have existed had the LPA properly unturned every stone in support of the examination as required by paragraph 11b of the NPPF, and this information had been made available to the examining Inspector.
- 1.7 Accordingly, whilst not the exercise required by paragraph 77 and footnote 8 of the NPPF, it is interesting to assess the 5YLS position that would arise if the LPA had properly unturned every stone and provided this information to the examining Inspector.
- 1.8 The examining Inspector was informed that 3,672 homes could sustainably be delivered as set out on page 49 of the Local Plan which then translated through to the housing requirement of Policy SS2. As we now know that there is already capacity to deliver an additional 449 homes over the plan period according to the LPA, applying paragraph 11b of the NPPF there would be a housing requirement for at least 4,121 homes (or 258 per annum) rather than 3,672 (or 230 per annum). The 5YLS is therefore also assessed on this basis below.

The need for housing

- 1.9 Owing to the fact that the minimum housing requirement in Worthing Borough is not reflective of the need for housing, it is also appropriate to consider the sufficiency of the 5YLS against the minimum local housing need of the standard method, as whilst this would

homes at Carlton House, 9 homes at St Andrews Gardens, an additional 50 homes at Union Place, 21 homes at Skywaves, 11 homes at ATC Headquarters, 9 homes at 148–152 Montague Street, 42 homes at The Montague Centre, 9 homes at the Development Site at 2 to 14 Goring Road, 9 homes at 10–20 Marine Place and 80 homes at Former Debenhams.



not engage paragraph 11d it provides a gauge of the need for additional housing in Worthing Borough within the five-year period.

- 1.10 The standard method identifies a minimum uncapped need for 930 homes per annum which is the appropriate measure of minimum need according to the PPG (2a-007).

Taking account of past delivery

- 1.11 The latest published assessment of the 5YLS position is set out in the AMR (CDE41) and considers the supply over the period 2023-28.

- 1.12 The PPG (68-031) identifies that when assessing the 5YLS against an adopted housing requirement, the level of shortfall prior to the base-date should be added to the requirement over the five-year period, but when using the standard method there is no requirement to do so.

- 1.13 From the start of the plan period in 2020 until the base-date of the 5YLS assessment in 2023, a total of 623 homes have been delivered according to Table 3 of the AMR. This compares with the minimum adopted housing requirement for 690 homes, with an under-delivery of 67 homes; and with the minimum housing requirement that would exist if every stone had been unturned for 773 homes, with an under-delivery of 150 homes.

Buffers

- 1.14 Paragraphs 77 and 79b of the NPPF require the application of a 20% buffer where, as is the case here, there is a record of substantial under-delivery.

The resultant requirements

- 1.15 The resultant requirements are calculated in Table 1.1 below. This demonstrates that whilst there is a requirement for only 1,460 homes for the purposes of footnote 8 of the NPPF, there would be a requirement for 1,725 homes if every stone had been unturned in support of the Local Plan, and there is actually a minimum need for 5,580 homes which highlights the extent to which the adopted housing requirement does not meet housing needs.



Table 1.1 – the five-year requirements

	The requirement for the purposes of footnote 8	The requirement if every stone had been unturned	The need for housing
Requirement 2020–23	690	773	-
Completions 2020–23	623	623	-
Under-delivery 2020–23	67	150	-
Requirement/minimum need for 2023–28	1,150	1,288	4,650
Requirement including under-delivery for 2023–28	1,217	1,438	4,650
Requirement including 20% buffer	1,460	1,725	5,580

2. The deliverable supply

The definition of a deliverable site

2.1 The NPPF defines a deliverable site 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 permission³, 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 register⁴, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.” (emphasis added)

2.2 The NPPF therefore identifies three pre-conditions which need to be met in order to a site to be considered deliverable, namely that they must be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered within five years.

2.3 The definition then identifies two tests which apply to specified sources of supply to determine whether or not sites are deliverable, namely those in Category A and those in Category B.

2.4 In order for a site to be considered deliverable, it is therefore necessary to meet all three of the pre-conditions and to pass the appropriate test.

2.5 The tests identify that for sites to be considered deliverable, those sites within Category A should be considered to be deliverable unless there is clear evidence that homes will not be delivered within five years (providing the pre-conditions are met), and those within Category

³ These are subsequently referred to as Category A sites.

⁴ These are subsequently referred to as Category B sites.

B should only be considered deliverable where there is clear evidence that housing completions will begin within five-years (and providing the pre-conditions are met).

2.6 Under the former NPPF of 2012 it was permissible to assume that all sites were deliverable if there was a realistic prospect of delivery of each individual site. Taken in combination, such an approach gave rise to an unrealistic cumulative assessment. For example, where there was a 25% chance of a site delivering this may have been considered a realistic prospect. However, with ten such sites, the chances of them all delivering are less than one in a million. The approach of the former NPPF therefore produced unrealistic cumulative assessments of the deliverable supply in a number of Local Planning Authorities across the country.

2.7 The revised definition of deliverability addresses this by providing a much more balanced and realistic assessment of the supply, by identifying that providing the pre-conditions are met, Category A sites should be considered deliverable, but that Category B sites should not be considered deliverable unless there is clear evidence that these will actually achieve housing completions within five years. This is likely to result in the delivery from Category A sites being overestimated but may underestimate the delivery from Category B sites which in the round provides for a more realistic assessment of the overall supply.

2.8 The PPG provides guidance as to how this definition should be interpreted and assistance can also be gained by the approach adopted by s78 Inspectors (and in some instances by the courts). I highlight some of the most relevant material considerations in this regard below.

Sites for housing should offer a suitable location for development now

2.9 The PPG (3-018) confirms that a site can be considered to offer a suitable location for development:

“...if it would provide an appropriate location for development when considered against relevant constraints and their potential to be mitigated.”

2.10 It continues to state inter alia:

“When assessing sites against the adopted development plan, plan-makers will need to take account of how up to date the plan policies are and consider the relevance of identified constraints on sites / broad locations and whether such constraints may be overcome.”

2.11 Further assistance is provided in paragraph 34iv of the High Court Judgment of *Wainhomes (South West) Holdings Ltd and the Secretary of State for Communities and Local Government et al [2013] EWHC 597 (Admin)* (CDH31) which states:

“Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years.” (emphasis added)

2.12 Therefore, it is clear that when considering whether a site offers a suitable location for development it is necessary to have regard to its compliance with the Development Plan, and furthermore, if a planning application is subject to objections that there would need to be “significant site specific evidence” to conclude that the site offers a suitable location.

2.13 This is reflected in paragraphs 94 and 108 of the appeal decision at Land North East of Becket’s Grove, Wymondham (CDH39) wherein the Inspector found that where sites were subject to such objections, in the absence of evidence that these will be overcome, sites should not be considered deliverable.

The framework for assessing the deliverability of Category A sites

2.14 According to the NPPF, these sites are to be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years.

2.15 This clearly requires that once planning permission expires, the presumption of deliverability should no longer apply. Once planning permission expires, Inspectors have consistently found that such sites should no longer be considered deliverable including for example in paragraph 40 of the appeal decision at Land to the north of Moreton Road, Moreton (CDJ79) and paragraph 32 of the appeal decision at Land east of Barns Lane, Burford (CDJ80).

2.16 For all other Category A sites, where planning permission remains extant, these are to be considered deliverable unless there is clear evidence to the contrary.

The framework for assessing the deliverability of Category B sites

2.17 These sites should only be considered deliverable where there is clear evidence that completions will begin on site within five years.

2.18 The PPG (68-007) requires that robust, up to date evidence needs to be available. A number of appeal decisions⁵ have interpreted this to require that there needs to be something cogent to provide strong evidence that in reality a site will deliver housing in the timescale and in the numbers contended for, rather than relying upon mere assertion.

2.19 The PPG (68-007) also provides a non-exhaustive list of examples of what clear evidence may include⁶. The examples include:

- i. the progress towards the approval of reserved matters,
- ii. a planning performance agreement that sets out the timescales,
- iii. a written agreement between the LPA and the site developer(s) which confirms the developer's delivery intentions and anticipated start and build-out rates,
- iv. firm progress with site assessment work, or
- v. clear relevant information about site viability, ownership constraints or infrastructure provision.

2.20 In general, and in accordance with the PPG, Inspectors and the Secretary of State have found that something akin to a written agreement or the submission of a reserved matters application is likely to be necessary to provide clear evidence. For example, in paragraph 21

⁵ See for example paragraph 56 of the Land at Caddywell Lane/Burwood Lane, Great Torrington appeal decision (CDJ82).

⁶ It explicitly identifies that clear evidence may include these examples, which clearly indicates that one of these examples alone would not necessarily provide clear evidence. For example, evidence about site viability could not in itself provide clear evidence that completions will begin.

of the Land off Audlem Road/Broad Lane, Stapeley recovered appeal decision (CDH38), the Secretary of State concluded that:

“He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; 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; and a site where the agent in control of the site disputes deliverability.” (emphasis added)

2.21 In this paragraph, the Secretary of State also clearly identifies that where the milestones identified in any evidence have not been achieved, the evidence should no longer be relied upon as providing clear evidence.

2.22 The content and realism of any such written agreement will also be material to whether or not there is the clear evidence envisaged by the NPPF. For example, in paragraph 23 of the Land off Popes Lane, Sturry appeal decision (CDJ71) states inter alia:

“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.” (emphasis added)

2.23 Similarly, paragraph 57 of the Land at Caddywell Lane/Burwood Lane, Great Torrington appeal decision (CDJ82) states:

“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.”
(emphasis added)***

Sites which post-date the base-date

- 2.24 The 5YLS provides an indication of the supply to address housing needs over the immediate five years. It does so by assessing the supply of deliverable sites over the five years from a specified base-date against the housing need which applied at that base-date. Any sites which post-date that base-date will respond to a different housing need. Such sites cannot therefore be included in the deliverable supply as this would skew the calculation. If these were to be included, it would also be necessary to take account of the housing need which existed at the time these sites gained planning permission and to discount all homes which had been delivered prior to this date (as these would no longer be deliverable).
- 2.25 This has been the consistent finding of every s78 appeal decision of which I am aware including for example in paragraph 326 of the Inspectors recommendations to the Secretary of State in the recovered Farleigh Fields appeal decision⁷ (CDJ60) which states inter alia:

“It is common ground that it is appropriate to assess supply for the five year period starting from 1 April 2016, however NSC includes sites in its anticipated supply that have been consented since that base date. As the appellant identifies, there is a significant body of appeal decisions in which Inspectors have indicated that such an approach is not appropriate in the absence of proper accounting¹³⁶. I share those Inspectors’ broad view that if such sites are to be included then account must also be taken of the housing requirement that has accrued during the same period. NSC has not factored in that increased requirement or the increased backlog accrued after 1 April 2016, such that there is an imbalance in its inputs and a consequential artificial inflation of its supply of housing land over the five year period in relative terms. Accordingly, all of those sites, which amount to 328 dwellings, should be omitted for the purposes of this exercise.” (emphasis added)

- 2.26 The Secretary of State agreed in paragraph 18 of the appeal decision that:

“...For the reasons set out by the Inspector at IR325–327, he concludes that 328 units should be removed from supply, reducing the subtotal further to 7,885 (IR326).”

⁷ See also paragraph 58 of the Land at Windacres Farm, Rudgwick appeal decision (CDJ63), paragraph 31 of the Entech House, Woolmer Green appeal decision (CDJ26), paragraph 67 of the Land on East Side of Green Road, Woolpit appeal decision (CDJ88), paragraph 62 of the Land off Colchester Road, Bures Hamlet appeal decision (CDJ28) and countless others.

3. Category A sites

- 3.1 The AMR includes a supply of 1,179 homes from sites with planning permission for non-major development and other sites with detailed consent.
- 3.2 These sites should be considered deliverable in the absence of clear evidence that completions to the contrary such as evidence that there is no longer a demand for the type of units proposed, providing they are available now, offer a suitable location for development now and have a realistic prospect that housing will be delivered within five-years. The LPA's supply from these sites is accepted with the following exceptions.
- 3.3 40-42 South Street – this site gained full planning permission for the redevelopment of existing buildings to provide retail space and 9 flats in July 2020. Condition 2 required that development was commenced within 3 years, namely by 21st July 2023. However, by the end of November 2023 no applications to discharge any of the pre-commencement conditions have even but submitted such that development cannot have lawfully commenced and as such planning permission has expired.
- 3.4 In such circumstances, the NPPF indicates, and Inspectors have consistently agreed that such sites should not be considered deliverable. Accordingly, the supply of the LPA should be **reduced by 9 homes**.
- 3.5 HMRC – Barrington Road (A8) – this allocated site gained outline planning permission in April 2021. A reserved matters application was then approved in November 2022. The site is therefore clearly deliverable.
- 3.6 The developer, Bellway Homes, identifies on its website that this site will launch in January 2024, with the first homes for sale in the spring and the first residents being handed the keys in May 2024.
- 3.7 The latest annual report of Bellway Homes (CD83) identifies that 11,198 homes were delivered from 235 outlets in 2022, which equates to an average of 48 homes per outlet per year. This would suggest that from spring 2024 until March 2028, approximately 200 homes will be delivered rather than the 260 assumed by the LPA. In light of progress to date, I therefore consider that the supply of the LPA should be **reduced by 60 homes**.

3.8 19 Manor Road – this site gained full planning permission in November 2020 for the demolition of an existing building including 1 home to provide 10 apartments (a net gain of 9 homes). Condition 2 required that development was commenced within 3 years by 30th November 2020 and yet there has not even been an application to discharge any of the pre-commencement conditions and it is evident from Google Earth that development has not commenced. Indeed, the AMR confirms that planning permission has lapsed. Accordingly, this should no longer be considered deliverable, and the supply of the LPA should be **reduced by 9 homes**.

3.9 Jupps Garage – the Council has provided evidence through the preparation of the Statement of Common Ground which identifies that planning permission has lapsed and that the “agent suggests costs of building and interest rates has prevented his client proceeding with the development”. This site should therefore not be considered deliverable as planning permission has expired and the evidence suggests that the permitted development is not viable. Accordingly, the supply of the Council should be **reduced by 5 homes**.

3.10 The respective positions of either party on these sites are set out in Table 3.1 below.

Table 3.1 – The deliverable supply from Category A sites

Site	The LPA's position	The Appellant's position
40-42 South Street	9	0
HMRC – Barrington Road	260	200
19 Manor Road	9	0
Jupps Garage	5	0
Uncontested sites	896	896
Total	1,179	1,096

4. Category B sites

- 4.1 The AMR includes a supply of 450 homes from sites which had outline planning permission for major development at the base-date or which were allocated and did not have planning permission at the base-date.
- 4.2 In addition to the requirement that sites should be available now, offer a suitable location for development now and have a realistic prospect that housing will be delivered within five-years, these sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within five-years.
- 4.3 Unfortunately, the AMR provides no clear evidence at all in support of any Category B site, and as such has not provided the evidence necessary to demonstrate that any of these are deliverable. I have therefore undertaken to review the available evidence that is in the public domain to determine whether or not these are deliverable. Having undertaken this analysis, the LPA's supply from these sites is accepted with the following exceptions.
- 4.4 Beeches Avenue (A1) – an outline planning application for approximately 90 homes was submitted to the LPA in May 2023 on this allocated site. Interestingly, the South Downs National Park authority does not object to this proposed development notwithstanding that it is immediately adjacent to the National Park.
- 4.5 The LPA resolved to grant outline planning permission in December 2023 subject to a s106 agreement being reached. However, there is no evidence, let alone clear evidence that a s106 will be agreed in sufficient time to allow completions within the current five-year period or that even assuming a s106 is agreed that completions will then be achieved within the current five-year period.
- 4.6 In my experience it is not uncommon for the negotiation and agreement of a s106 to take in excess of five-years itself. Indeed, this is evident in Worthing Borough where the LPA resolved to grant planning permission for the site at Jubilee Hall & 10 Greenland Road in November 2018 and yet a s106 has still not been agreed in January 2024, over five years later. In the absence of any clear evidence that a s106 will be agreed in a shorter timescale, this site should not be considered deliverable according to the NPPF.

- 4.7 Additionally, on the two other sites which the AMR identifies as having been subject to a resolution to grant planning permission, it took 1 year and 11 months from the resolution until planning permission was granted at 22 Clifton Road, and 1 year and 3 months at Skywaves. Even assuming that there was clear evidence that the shortest of these timescales will be achieved at Beeches Avenue, outline planning permission wouldn't be granted until March 2025. Thereafter, Start to Finish (CDI3) suggests that it would take 3 years until the first completion is achieved on average, which would mean that this site would make at most only a very negligible contribution to the deliverable supply even if the shortest period for agreeing a s106 was replicated.
- 4.8 In overview, there is no clear evidence that a s106 will be agreed, or that completions will be achieved within five years, and it would be unrealistic to assume that more than a few homes could be delivered within five years.
- 4.9 Furthermore, in the absence of an application for the approval of detailed consent or any written agreement that the site will achieve completions from the site representative, the Secretary of State has found that such sites should not be considered deliverable in paragraph 21 of the *Stapeley decision* (CDJ81).
- 4.10 Accordingly, this site should not be considered deliverable, and the supply of the LPA should be **reduced by 40 homes**.
- 4.11 Caravan Club (A2) – this allocated site isn't even the subject of a planning application and there is no evidence that such an application will be forthcoming or that completions will be achieved within five years. In such circumstances, the Secretary of State has found that such sites should not be considered deliverable in paragraph 21 of the *Stapeley decision* (CDJ81).
- 4.12 Furthermore, not only is there no clear evidence that this site will deliver, but it would also be unrealistic to suggest that it will. The AMR suggests that this site will be sold within the next couple of months, following which a planning application will need to be prepared which I would suggest would take at least 6 months based on my experience⁸. Figure 4 of the Start to Finish report (CDI3) then suggests that on average it takes 4 years from the submission of a planning application until the first completion on a site of this size. Given that this site is

⁸ And potentially longer depending on the requirement for and timing of ecological surveys.

not even in the control of a developer it would be expected that if anything this may take longer. Accordingly, this site would be expected to deliver the first completions somewhere around late 2028, beyond the current five-year period which runs to March 2028.

4.13 Therefore, in accordance with the approach of the Secretary of State in the *Stapeley* decision and the requirements of the NPPF, this site should not be considered deliverable, and the supply of the LPA should be **reduced by 25 homes**.

4.14 Centenary House (A3) – the circumstances on this allocated site are identical to those on the preceding site, as the site is not in the control of a developer, there is not even a planning application and no evidence that the site will be delivered, and no realistic prospect of it delivering within the current five-year period.

4.15 Therefore, in accordance with the approach of the Secretary of State in the *Stapeley* decision and the requirements of the NPPF, this site should not be considered deliverable, and the supply of the LPA should be **reduced by 50 homes**.

4.16 Teville Gate (A12) – a full planning application for the redevelopment of this site to provide 378 homes, a hotel, a foodstore, a gym and other uses was submitted in February 2019 but remains undetermined. Indeed, no progress appears to have been made on this application since March 2020 according to the website of the LPA, which casts significant doubt as to the prospects of this being determined favourably at any point in the near future.

4.17 As it stands, the application also remains subject to significant objections, which without any solution may explain why the planning application has stalled. These objections include those:

- i. From the Borough Council owing to the insufficiency of waste storage areas.
- ii. From consultants acting on behalf of the Borough Council on design grounds which recommends that the scheme is reconsidered in its entirety using a phased approach.
- iii. From the planning policy team of the Borough Council including owing to non-compliance with some of the policies of the former Development Plan and subsequently adopted Development Plan.

4.18 There is no significant site-specific evidence to demonstrate that these objections will be resolved as required by paragraph 34iv of the *Wainhomes Judgment* and given the lack of

progress in determining the planning application there is no indication that these will be resolved at any point in the near future.

4.19 Furthermore, even if these are resolved, there is no clear evidence that completions will be achieved within five years as required by the NPPF, and given the scale of the proposed development, it is considered very unlikely that this could possibly be achieved within five years. Indeed, the Council has identified through the preparation of the Statement of Common Ground that the disposal of the site to “Homes England taking longer than expected and as a development partner would need to be found delivery could well slip outside the 5 year period.”

4.20 Therefore, in accordance with the approach of the Secretary of State in the *Stapeley* decision, the requirements of the NPPF and the requirements of the *Wainhomes Judgment*, this site should not be considered deliverable, and the supply of the LPA should be **reduced by 60 homes**.

4.21 Union Place (A13) – this allocated site is the subject of two undetermined outline planning applications. The first was submitted in March 2020 and proposes a mixed-use development including up to 186 homes, commercial floor space, hotel, and cinema. However, no progress appears to have been made towards determining this application since October 2020 according to the LPA’s website, very possibly because of the objections and concerns including:

- i. From the local highways authority owing to absence of sufficient information.
- ii. From Historic England on the basis of the harm to heritage assets.

4.22 An alternative application was then submitted in November 2023 which now proposes a mixed-use development of between 4 and 11 storeys including up to 216 apartments and commercial floorspace, and presumably represents the development which the applicant intends to deliver. This application is similarly subject to significant objections and concerns including:

- i. From the lead local flood authority owing to the absence of sufficient information, no agreement on a sewerage connection, corrections required to the flood risk modelling, and excessive surcharge in the drainage network.

- ii. From Active Travel England owing to the absence of sufficient information.
- iii. From the local highways authority owing to the absence of sufficient information.

- 4.23 A number of consultees including Historic England have also yet to comment on this application.
- 4.24 There is no significant site-specific evidence that these objections and concerns will be resolved contrary to the requirements of the *Wainhomes Judgment*, and given the progress on the preceding application, it would appear that these issues may take many years to resolve.
- 4.25 Furthermore, even assuming that this is determined favourably in the coming years, there is no evidence that completions will be achieved in the current five-year period and accordingly this site should not be considered deliverable.
- 4.26 The position of the LPA, namely that this site will deliver 200 homes by March 2028 (in just over 4 years) is also wholly unrealistic given that it does not yet even benefit from planning permission. Indeed, the Executive Summary of the Start to Finish report suggests that it takes 3 years on average from the grant of outline planning permission until the first completion and Figure 7 suggests that on average 55 homes per annum are built on schemes of this size. This would mean that even if outline planning permission is granted by 22nd February 2024 (the target determination date), this site would be expected to achieve the first completions in February 2027 and contribute c.55 homes to the deliverable supply rather than the 200 proposed by the LPA. However, in the absence of any clear evidence that this will be achieved, and especially given the record to date, this site should not be considered deliverable and the supply of the LPA should be **reduced by 200 homes** in accordance with the position of the Secretary of State in the *Stapeley* decision.
- 4.27 Upper Brighton Road (A14) – the circumstances on this allocated site are identical to those at Centenary House and Caravan Club, as there is not even a planning application and no evidence that the site will be delivered, and no realistic prospect of it delivering within the current five-year period.

4.28 Therefore, in accordance with the approach of the Secretary of State in the *Stapeley* decision and the requirements of the NPPF, this site should not be considered deliverable, and the supply of the LPA should be **reduced by 75 homes**.

4.29 The respective positions of either party on Category B sites is set out in Table 4.1.

Table 4.1 – The deliverable supply from Category B sites

Site	The LPA's position	The Appellant's position
Beeches Avenue (A1)	40	0
Caravan Club (A2)	25	0
Centenary House (A3)	50	0
Teville Gate (A12)	60	0
Union Place (A13)	200	0
Upper Brighton Road (A14)	75	0
Total	450	0

5. Sites outside of Category A or B

- 5.1 The LPA include a supply of 306 homes from sites which did not fall into either Category A or B at the base-date of the assessment an.
- 5.2 Whilst some of these have since gained planning permission, these permissions were granted after the base-date and so cannot be included in the deliverable supply for the period 2023–28 in accordance with the consistent findings of the Secretary of State and Inspectors, of which there are very many as briefly addressed above. Accordingly, the supply of the LPA should be **reduced by 306 homes**.
- 5.3 These sites can be categorised as follows:
- i. The site at the Former Canteen, Northbrook College (20 homes) has been refused planning permission since the base-date and so would not now be deliverable even if it had been at the base-date.
 - ii. The developer has gone into administration and is no longer progressing the scheme at Columbia House (78 homes).
 - iii. Several of the sites including 22 Clifton Road (13 homes) and Skywaves (21 homes) had a resolution to grant planning permission at the base-date and planning permission has since been granted. Such sites are ineligible for inclusion in the current period in accordance with the consistent findings of every appeal decision of which Pegasus Group is aware and as explicitly set out in paragraph 67 of the Land on East Side of Green Road, Woolpit appeal decision (CDJ88) and paragraph 62 of the Land off Colchester Road, Bures Hamlet appeal decision (CDJ28), owing to the fact that these would skew the resultant assessment.
 - iv. Several of the sites including ATC Headquarters (11 homes), 148–152 Montague Street (9 homes), The Montague Centre (42 homes), Development Site at 2 to 14 Goring Road (9 homes), 10–20 Marine Place (9 homes) and Former Debenhams (80 homes) did not even benefit from a resolution to grant planning permission at the base-date. Accordingly, these are ineligible for inclusion according to the consistent finding of every appeal of which Pegasus Group is aware. Furthermore, on some of thee the SHLAA suggests that they are not suitable for development including for example at ATC Headquarters and The Montague Centre.

- v. The site at Jubilee Hall & 10 Greenland Road (14 homes) benefits from a resolution to grant planning permission and planning permission has still not been granted. Accordingly, these are once again ineligible for inclusion according to the consistent findings of every appeal of which Pegasus Group is aware, and furthermore one would need clear evidence that completions will be achieved even if this was eligible for inclusion and no such information is available.

5.4 The respective positions of either party on these sites is set out in Table 5.1.

Table 5.1 – The deliverable supply from Category B sites

Site	The LPA's position	The Appellant's position
Jubilee Hall & 10 Greenland Road	14	0
Former Canteen, Northbrook College	20	0
22 Clifton Road	13	0
Skywaves	21	0
ATC Headquarters	11	0
148-152 Montague Street	9	0
The Montague Centre	42	0
Development Site at 2-14 Goring Road	9	0
10-20 Marine Place	9	0
Former Debenhams	80	0
Columbia House	78	0
Total	306	0

6. The total deliverable supply

6.1. Based on the preceding analysis, the respective positions on the supply over the period 2023–28 are set out in Table 6.1 below.

Table 6.1 – the deliverable supply

Site	The LPA's position	The Appellant's position
Category A sites		
40–42 South Street	9	0
HMRC – Barrington Road	260	200
19 Manor Road	9	0
Jupps Garage	5	0
Uncontested sites	896	896
Total	1,179	1,096
Category B sites		
Beeches Avenue (A1)	40	0
Caravan Club (A2)	25	0
Centenary House (A3)	50	0
Teville Gate (A12)	60	0
Union Place (A13)	200	0
Upper Brighton Road (A14)	75	0
Total	450	0
Sites outside of Category A or B		
Jubilee Hall & 10 Greenland Road	14	0
Former Canteen, Northbrook College	20	0
22 Clifton Road	13	0
Skywaves	21	0
ATC Headquarters	11	0
148–152 Montague Street	9	0
The Montague Centre	42	0
Development Site at 2 to 14 Goring Road	9	0
10–20 Marine Place	9	0
Former Debenhams	80	0
Columbia House	78	0
Total	306	0
Windfall		
Total	124	124
TOTAL	2,059	1,220

7. The 5YLS positions

7.1 Based on the preceding analysis, the respective 5YLS positions of either party are presented in Table 7.1 below.

Table 7.1 – the respective 5YLS positions

Site	The requirement for the purposes of footnote 8		The requirement if every stone had been unturned		The need for housing	
	The supply of the LPA	The supply of the Appellant	The supply of the LPA	The supply of the Appellant	The supply of the LPA	The supply of the Appellant
Five-year requirement	1,460	1,460	1,725	1,725	5,580	5,580
Deliverable supply	2,059	1,220	2,059	1,220	2,059	1,220
5YLS	7.05	4.18	5.97	3.54	1.84	1.09
Surplus/shortfall	+599	-240	+334	-505	-3,521	-4,360

7.2 The following is evident from the preceding table:

- i. Based on my assessment, the LPA is unable to demonstrate a 5YLS for the purposes of paragraph 77 of the NPPF such that footnote 8 is engaged for another reason besides the record of substantial under-delivery recorded by the HDT.
- ii. The 5YLS position is significantly and artificially inflated as a direct consequence of the fact that this is assessed against the adopted housing requirement, the justification for which has now fallen away given that it is now evident that there is significantly more capacity for development than assumed within the adopted housing requirement, such that had the LPA properly assessed capacity in support of the emerging Local Plan, their own position would be that the 5YLS position would be over a year less (with 5.97yIs rather than a 7.05yIs).
- iii. Regardless of the above, there is an overwhelming need for additional housing as is evident from the fact that there are shortfalls of either 3,521 or 4,360 homes against the minimum need based on the respective positions of either party.



Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

Cirencester

33 Sheep Street, Cirencester,
Gloucestershire, GL7 1RQ
T 01285 641717
E Cirencester@pegasusgroup.co.uk
Offices throughout the UK

Expertly Done.

DESIGN | ECONOMICS | ENVIRONMENT | HERITAGE | LAND & PROPERTY | PLANNING | TRANSPORT & INFRASTRUCTURE



All paper sources from sustainably managed forests

Pegasus Group is a trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

Registered office: Querns Business Centre, Whitworth Road, Cirencester, Gloucestershire, GL7 1RT
We are ISO certified 9001, 14001, 45001



[Pegasus_Group](#)



[pegasusgroup](#)



[Pegasus_Group](#)

PEGASUSGROUP.CO.UK