

## **WILTSHIRE COUNCIL - APRIL 2019**

### **WILTSHIRE HOUSING SITE ALLOCATIONS PLAN EXAMINATION NOTE**

#### **COUNCIL RESPONSE TO SUBMISSION OF APPEAL DECISIONS FOR:**

- **LAND NORTH OF HILLTOP WAY, SALISBURY (EXAM 13)**
- **LAND OFF FIRS ROAD, ALDERBURY (EXAM 12)**

#### **Introduction**

1. This note has been prepared at the request of the Inspector following submission of two appeal decisions to the examination.
2. The Land North of Hilltop Way appeal (hereafter "Hilltop Way") was heard and determined against the 2012 National Planning Policy Framework (NPPF).
3. The Land off Firs Road, Alderbury appeal (hereafter "Alderbury") was heard and determined against the 2018 National Planning Policy Framework (NPPF).
4. Both sites are located within the South Wiltshire Housing Market Area (HMA).

#### **Land North of Hilltop Way**

5. The Council refused a planning application for 10 semi-detached bungalows and accompanying development at Land North of Hilltop Way, Salisbury on 7 November 2016. The decision contained two reasons for refusal: one as the site lies outside the defined limits of development and did not meet any exception criteria; and one related to character of the area and local landscape. The applicant subsequently appealed the decision.
6. During June 2017 the Council were preparing the pre-submission draft consultation for the Wiltshire Housing Site Allocations Plan. The appeal site was included as a proposed allocation for 10 residential units. The Landscape and Visual Impact Assessment carried out for the draft Plan superseded the assessment that the landscape reason for refusal relied upon. On these grounds the Council considered it could no longer defend its reasons for refusal, and withdrew both reasons prior to the appeal.
7. The appeal hearing took place on 27 July 2017. The matter of 5-year housing land supply (5YHLS) was raised by the appellant but was not interrogated at the hearing. The Council did not submit any 5YHLS evidence, as the 'limits of development'

reason for refusal had been withdrawn prior to the hearing. The Council considered that as there were no relevant policies for the supply of housing to be defended, the implications of the ability or failure to demonstrate a 5YHLS was not relevant to the appeal.

8. The Statement of Common Ground for the appeal sets out a series of factual statements relating to housing land supply. However these are factual points and do not imply that the Council was attempting to advance any argument on this matter, as it was not contesting housing land supply at the hearing. The Statement included a table showing what the housing land supply position would be using each method (the table was subsequently revised during the hearing due to an arithmetical error in the original.)
9. During discussions at the hearing the appellants raised the issue that the Sedgefield approach should be used when assessing 5YHLS. Although the Council were not contesting the 5YHLS it brought the relevant case law<sup>1</sup> to the Inspector's attention and provided the judgment to him following the hearing.
10. The Inspector notes the Bloor Homes judgment in the hearing documents on page 10 of the decision letter which was issued on 27 July 2017.
11. At paragraph 11 of the decision letter, the Inspector considers the revised table in the SoCG.

*“This revised table shows that the Council has a 5.15 years supply of housing using the ‘Sedgefield’ method, which only just exceeds the requirement. (Using the ‘Liverpool’ method increased the supply to 5.69 years.) However, with the application of a 5% buffer, based on the ‘Sedgefield’ method, which appears to be the Government’s preference according to the PPG, would point to a requirement of 5.25 years, and against this, the revised table 3 still shows a slight shortfall.”*

12. At paragraph 16 of the decision letter, the Inspector concludes

*“However, the fact that the Council cannot demonstrate a 5 year housing land supply, when allowing for a 5% buffer would render the adopted plan out of date for the purpose of housing land supply, as paragraph 49 of the Framework states – in which case a balancing act would be required.”*

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<sup>1</sup> Bloor Homes (East Midlands) v Secretary of State for Communities And Local Government & Hinckley & Bosworth Borough Council [2014] EWHC 754 (Admin) (19 March 2014)

13. The comment in paragraph 11 regarding the Government's preference for the Sedgefield method indicates the Inspector did not take into account the Bloor Homes judgment submitted during the hearing. This conclusion is based only on his interpretation of the PPG. He could not have reached a conclusion based on a balanced assessment of evidence from the Council and the appellant as the Council did not present any such evidence.
14. As such the Council's position is that the decision was based on an uncontested appeal. Following the decision, the Council maintained that it could demonstrate a 5-year housing land supply in the South Wiltshire HMA.
15. Notwithstanding the Council's position, the findings of a S78 Inspector does not bind the Council in considering its housing land supply and requirement in the context of a Development Plan. In *Shropshire Council v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 2733 (Admin) at paragraph 22 of the judgment, the judge (quoting from the findings in a previous case<sup>2</sup>) found that the exercise in determining the housing requirement and supply position for the purposes of an individual application/appeal was a separate exercise than the matter to be considered in a Development Plan.

### **Land off Firs Road, Alderbury**

#### **Context**

16. The Council refused a planning application for 50 residential units and accompanying development at Land off Firs Road, Alderbury on 14 December 2017. The appeal was heard by way of public inquiry from 13 – 15 November 2018. The matter of 5-year housing land supply (5YHLS) was disputed at the inquiry. The appeal was contested against the housing land supply position set out in the 2017 Housing Land Supply Statement (published March 2018). The components of the 5-year housing land supply that were in dispute were the approach to dealing with the shortfall (often referred to as the 'Liverpool' and 'Sedgefield' methods), delivery yield from 2 disputed sites (Fugglestone Red and King's Gate), and the 5-year windfall allowance. It should be noted that the Council's response to the assessment of the 5-year windfall allowance has been set out in a separate note to the examination.

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<sup>2</sup> *Stratford on Avon District Council v Secretary of State for Communities and Local Government & Ors* [2013] EWHC 2074 (Admin)

17. The Inspector issued his decision letter on 7 December 2018, allowing the appeal. In his decision the Inspector considered that the 'Sedgefield' approach was the appropriate method to dealing with the shortfall, the expected yield from the 2 disputed sites should be reduced, and the 5-year windfall allowance proffered by the appellants was to be preferred. He concluded the Council could not demonstrate a 5-year housing land supply in the South Wiltshire HMA.

### **Shortfall**

18. At paragraph 33 of the decision letter the Inspector makes reference to the latest Planning Practice Guidance (PPG) paragraph 3-044-20180913 in his considerations and commented that this now represents a default approach for dealing with the shortfall. This paragraph was part of an update to the PPG released in September 2018 to accompany the 2018 NPPF (and now the 2019 NPPF). The previous guidance on this matter dated from March 2014 when the PPG was inceptioned.
19. As explained in the assessment of the Hilltop Way decision above there is no preferred method for dealing with the shortfall in the 5-year housing land supply calculation in the 2012 NPPF and its accompanying March 2014 guidance.

### **Delivery yield**

20. The delivery yield from the 2 disputed sites (Fugglestone Red and King's Gate) was considered against the trajectories in the 2017 Housing Land Supply Statement.
21. The development at Fugglestone Red is a strategic allocation in the Wiltshire Core Strategy, allocated for 1250 homes. The land is owned and being developed exclusively by Persimmon Homes.
22. The development at King's Gate is a strategic allocation in the Wiltshire Core Strategy, allocated for 1300 homes. It is controlled by Bloor Homes, and is being developed in phases with a number of housebuilders. The site is adjacent to Archers Gate, a housing allocation in the former Salisbury District Local Plan, which has been built out. It is being built out by a number of housebuilders and development is ongoing at this site.
23. As part of its annual monitoring activity the Council contact site representatives, housebuilders to establish potential for delivery and likely yield from each site for each year over the plan period. This yield is assessed by the Council against historic

delivery rates for similar sized development sites that have been delivered, or against delivery at the site itself if it is under construction. Where the identity of the housebuilder is known, the proposed trajectory is assessed against previous ability to deliver at the rates indicated on other sites. Factors such as market competition from other sites and outlets in the area, as well as overall delivery in the locality are also taken into account in establishing a final trajectory. The proposed trajectory is then ratified by planning case officers who are dealing with site representatives and/or progressing the site.

24. The Inspector drew conclusions from the evidence presented to him. It is noted that the Council are due to publish its 2018 Housing Land Supply Statement shortly which will review the trajectories that were before the Alderbury Inspector, based on the latest information available and assessment of potential delivery.
25. At paragraph 38 of the Alderbury decision the Inspector reaches conclusions on King's Gate. Based on the evidence before him, he notes that commencement of delivery did not occur until several months after the developer's predicted date, delivery has been delayed accordingly, and concurred with the appellant that some reduction should be made for this delay. The commencement referred to relates to the final phase of development that the Council's forthcoming 5-year supply was partially based upon.
26. In its evidence the Council had submitted information detailing recent housing completions at the development. This was based on its annual completions surveying activity. The surveying activity for the 2017/18 monitoring year had taken place in Spring 2018. The evidence presented is shown in Table 1.

**Table 1: housing completions at Kings Gate since 2013/14 - presented as evidence to the Alderbury inquiry.**

Site reference	Developer	2013/14	2014/15	2015/16	2016/17	2017/18
S13.6755	Bloor	0	69	49		
S14.6993	Persimmon			32	94	
S16.0124	Bloor				64	79
S15.10691	Bovis					86
<b>TOTAL COMPLETIONS</b>		<b>0</b>	<b>69</b>	<b>81</b>	<b>158</b>	<b>165</b>

27. To support its case on progress at the site the Council also produced photographic evidence from October 2018 showing that progress on the final phase was underway with a number of housing units nearing completion.
28. However in preparing its evidence the Council had erroneously not identified that a Reserved Matters for the final phase (Council reference S15.2530) had also commenced, and indeed completions had been identified in its monitoring activity during the monitoring year 2017/18. This indicates that delivery of the final phase had commenced earlier than presented at the inquiry. This information was not before the Alderbury Inspector.

### **5-year windfall allowance**

29. An examination note regarding the 5-year windfall allowance and the findings of the Inspector in this appeal has been provided to the Plan Inspector by the Council separately.

### **Conclusion**

30. The Council consider that conclusions regarding the method for dealing with shortfall in this appeal cannot be applied in the context of assessing the Wiltshire Housing Site Allocations Plan as the policy framework and guidance differ. The delivery yield from disputed sites is reassessed on an annual basis, and this assessment for the 2018 housing land supply position is currently in progress. The considerations of the 5-year windfall allowance has been discussed in a separate paper for the Plan examination and it is noted that the assessment of windfall over the forthcoming 5 year period is different to an assessment of anticipated windfall delivery over the remainder of the plan period.