

USING THE EAST OF ENGLAND FORECASTING MODEL (EEFM) TO ESTIMATE THE NUMBER OF HOMES NEEDED TO SUPPORT ECONOMIC GROWTH

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SUMMARY

This note discusses how the EEFM can be used to estimate the number of homes needed in a local authority area to support the forecast change in jobs in that area. It concludes that:

- ***The EEFM’s forecast of the change in the population in a local authority area can be used to estimate the homes needed to support the forecast change in jobs. If the demographically-based assessment of the area’s need for housing does not provide at least the working age population suggested by the EEFM, migration from the rest of the UK should be increased until a sufficiently large working age population is projected. Having produced a population projection that is consistent with the EEFM, household formation rate assumptions can then be used to turn that projected population into a number of households, and hence a number of homes.***
- ***The EEFM is an integrated model, which forecasts both jobs (labour demand) and the population needed to fill those jobs. Users should not make alternative estimates of the population needed to fill the EEFM jobs, based on economic activity/participation rates from another source. To do so is logically inconsistent with the EEFM and the results may be highly misleading. The note includes a worked example which shows that using Office for Budget Responsibility employment rates to estimate the working age population required to support an Experian UK jobs forecast over-estimates the increase required by a factor of 3. Had Experian assumed that the OBR activity rates represented the limit of the jobs which the population could support it would have produced a much lower jobs forecast.***

1. Introduction

1.1. The Planning Practice Guidance (PPG) advises:

“Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.”¹

¹ Planning Practice Guidance Paragraph: 018 Reference ID: 2a-018-20140306

- 1.2. This makes it clear that Local Plans should provide enough housing to ensure that the area's economic potential is not stifled by a lack of workers. This, in effect, directs those estimating the 'objectively assessed housing needs' (OAN) of an area to consider whether a demographically-based estimate of housing need would accommodate a sufficiently large resident labour force to support the likely growth in labour demand (the jobs that employers wish to fill).
- 1.3. The PPG is commonly interpreted to mean that, if the labour supply resulting from demographic projections falls short of expected demand, the OAN should be increased, so it provides enough homes to attract more people into the area. To determine if such a shortfall is likely, the analysis should take account of likely changes in unemployment, activity rates and commuting. Any predicted changes to these variables should be realistic, in the light of economic forecasts and historical experience. Wishful thinking or arbitrary assumptions are not acceptable. If significant changes in commuting are predicted, authorities should consider if these would result in unsustainable travel. If that is the case, as a matter of policy they should work co-operatively to resolve the issue.

2. Estimating the number of homes needed to support job growth

- 2.1. As the EEFM output contains an estimate of the 'working age population' (defined to be all those aged 16-64) it is straightforward to produce an estimate of the number of homes needed to support economic growth by comparing the EEFM working age population estimate with that used to produce the demographic projection-based estimate of housing need.
- 2.2. If the EEFM estimate of the working age population is lower than that in the demographically-based estimate there is no need for additional homes as the resident workforce will be more than large enough to support the forecast jobs increase. Note that the PPG does not provide for the demographic projection-based estimate to be reduced in such circumstances.
- 2.3. If the EEFM estimate of the working age population is larger than that in the demographically-based estimate it is necessary to increase the projected population above the level assumed in the demographic projection. This means assuming that net migration into the area is larger than assumed in the demographic projection as there is no other potential source of additional population. As the driver of increased net migration into the area is filling jobs, it is likely that the additional people moving into the area will come from the rest of the UK. Assumptions need to be made about how the demographically-based projected inflow is increased: for example, assuming that the extra migrants are not above or near state pension age as the driver of additional migration is jobs. Once this is done it is possible to produce a revised population projection broken down by age and sex that is consistent with the EEFM.
- 2.4. Aligning the projected population in this way to the level suggested by the EEFM gives an increase in population that is consistent with the projected increase in job numbers, from which the number of households formed and homes needed can be calculated using household formation rate assumptions.

3. Why it is inappropriate to use economic activity rates from another source to estimate the housing implications of a local jobs forecast

3.1. Some have been tempted to use economic activity rates derived from some other source such as the rates published by the Office for Budget Responsibility (OBR) in November 2015 to estimate the population (and hence homes) needed to support a jobs forecast. This can produce highly misleading results – for the reasons discussed below.

3.2. The relationship between the number of jobs in a given area ('workplace employment') and the number of people living in that area is governed by four factors:

3.2.1. The **economic activity rate**. This is the proportion of the population that is available for work, whether in work or unemployed. In what follows the economic activity rate will be defined to be the number of people of all ages who are available for work divided by the 16-64 population. (This is a measure of overall economic activity: economic activity varies by age and gender and there are significant numbers aged over 64 who are economically active.)

3.2.2. The **unemployment rate**. The proportion of a population who are unemployed. In what follows the unemployment rate will be given as a proportion of the 16-64 population.

3.2.3. **Net commuting**. This is the number of people who come into an area to work less the number who travel out of the area to work. A negative figure implies net out-commuting i.e. more people leave the area to work than come into it.

3.2.4. **Double jobbing**. This is the number of people with two or more jobs.

3.3. These factors link the working age population of an area to the number of jobs in that area as follows:

$$\begin{aligned} \text{Total workplace employment (jobs)} &= \text{16-64 resident population} \times (\text{economic} \\ &\quad \text{activity rate} - \text{unemployment rate}) \\ &\quad + \text{double jobbing} \\ &\quad + \text{net commuting} \end{aligned}$$

3.4. All four of the factors can vary over time and the assumptions made about how they do so can have a large impact on the estimate made of the size of the population needed to support a given number of jobs.

3.5. The economic activity rate minus the unemployment rate (as in the brackets in the above formula) is equal to the employment rate i.e. the number of employed people of all ages living in the area ('residence employment') as a proportion of the 16-64 population. Using the employment rate rather than separate economic activity and unemployment rates, the above formula becomes:

$$\begin{aligned} \text{Total workplace employment (jobs)} &= \text{16-64 resident population} \times \text{employment rate} \\ &\quad + \text{double jobbing} \\ &\quad + \text{net commuting} \end{aligned}$$

- 3.6. Of particular importance is the assumption made about how economic activity rates will change in the future. It is generally accepted that the economic activity rates of older people will increase as more people remain in the workforce for longer as the state pension age increases, pensions become less generous and health and life expectancy improve. There is, however, a range of views about how large the change will be and hence how economic activity rates will change.
- 3.7. The following worked example illustrates how different national forecasts imply different changes in economic activity rates and why using economic activity rate assumptions which are different from those used in a jobs forecast can produce highly misleading estimates of the population needed to support that forecast. It is, of course, the case that local authority forecasts of the numbers who are economically active must sum to the national forecast so it is reasonable to expect national and local rates to move broadly in parallel.
- 3.8. Chart 1 and Table 1 compare the EEFM 2016 UK jobs forecast with UK forecasts of similar data from Experian and Oxford Economics². There are differences in the population projections used in the three forecasts but the differences are small. Experian’s forecast is based on the 2012 National Population Projections (2012 NPP) and envisages an increase of 6,870,000 people over the period 2014-2031; the EEFM forecast (based on the 2014 NPP) has a population increase that is 240,000 (3.5%) larger; and Oxford Economics’ estimate is 32,000 (0.5%) larger than Experian’s figure. However, these small differences do not explain the very different increases in jobs, the Experian forecast for the increase in jobs over the period 2014-2031 being over 60% greater than the EEFM figure:

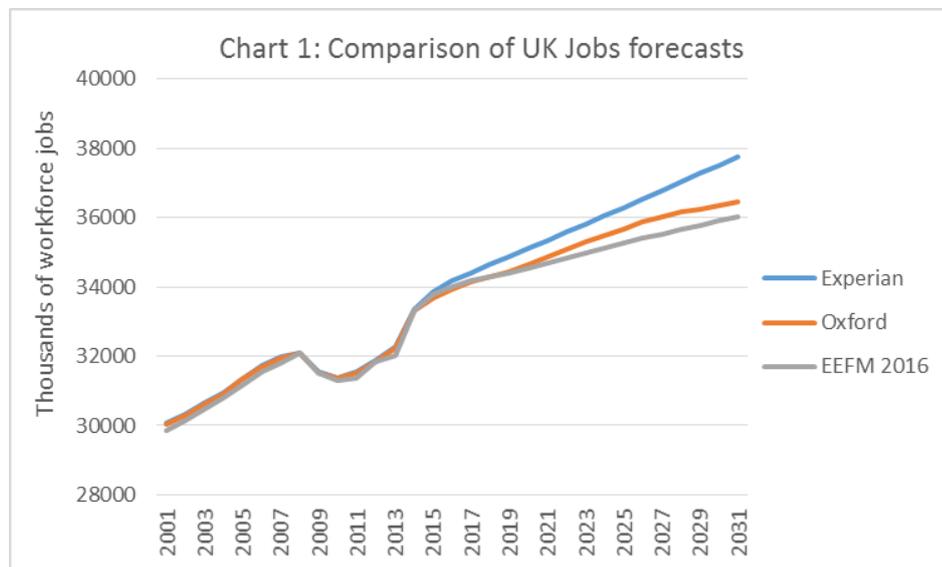


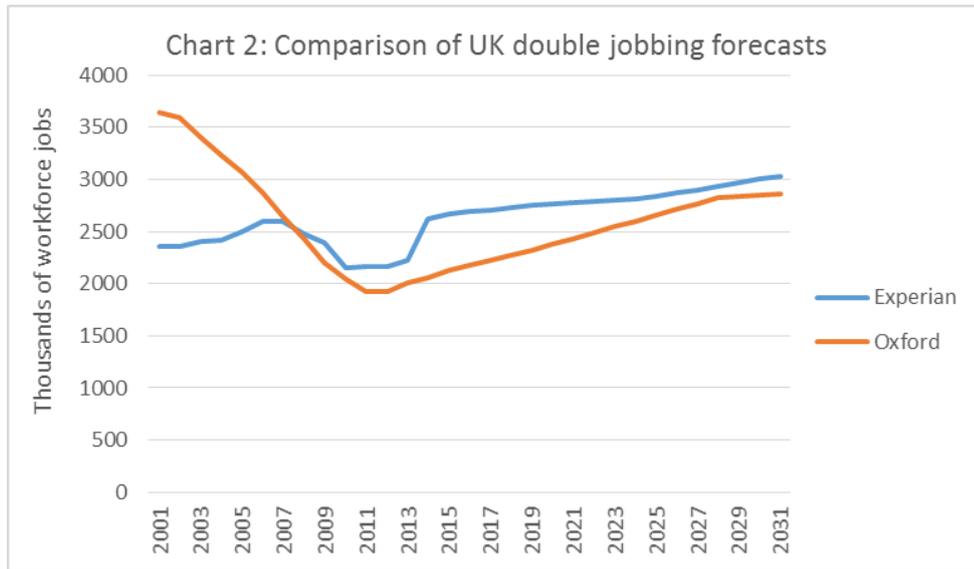
Table 1: UK jobs increase: 2014-2031		
Experian	Oxford Economics	EEFM 2016
4,419,000	3,139,000	2,696,000

² Note that these are not the current Oxford Economics and Experian forecasts but forecasts that were approximately contemporaneous with the EEFM forecast. They are used merely to provide a realistic illustration of the differences which can exist between reputable forecasts.

3.9. As the forecasts are for the UK as a whole, net commuting is relatively small³ so, to a reasonable approximation, the formula in paragraph 3.5 can be simplified to:

Total jobs = 16-64 resident population x employment rate + double jobbing

3.10. Chart 2 shows the double jobbing figures from the Experian and Oxford Economics forecasts (calculated by subtracting the people-based employment figures given in both forecasts from the workforce jobs figures):

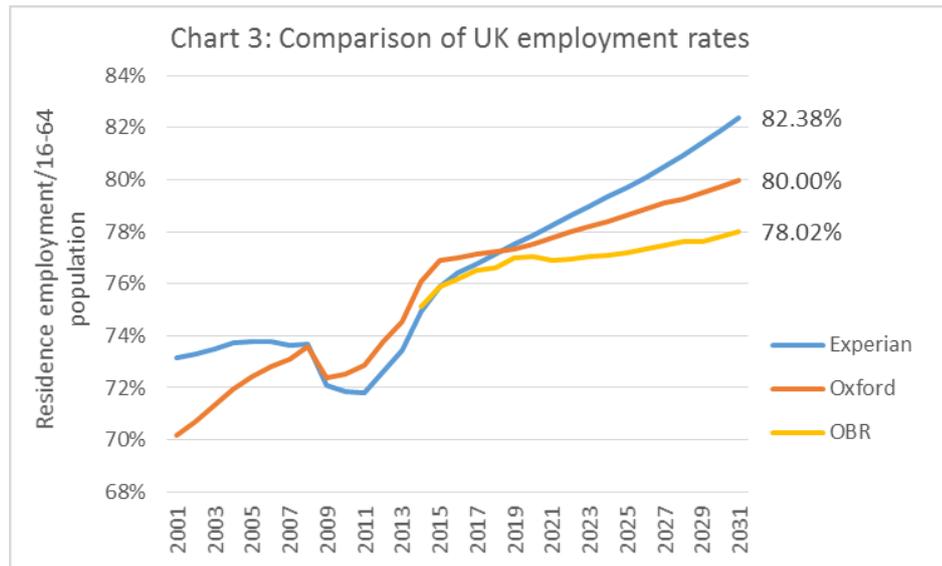


3.11. There seems to be curious disagreement about historical double jobbing rates, but by 2031 the difference between the two forecasts is less than 180,000. This compares with a difference between the two jobs forecasts of 1,300,000 jobs in 2031. This means that the vast majority of the difference between the two forecasts is due to the difference in employment rates⁴.

³ The Oxford Economics UK forecast used here assumes the net UK commuting is a net outflow of 167,000 after 2015. This suggests that differences between the forecasts in the assumptions made about net international commuting will be negligible compared with the differences in the job increase forecasts.

⁴ Employment rates are used in the example rather than separate economic activity and unemployment rates because the Oxford Economics and Experian forecasts use different definitions of unemployment (one using the claimant count and the other the ILO definition which includes those who are unemployed but not claiming benefit). It is not therefore possible to calculate consistent unemployment and economic activity rates for the two forecasts.

3.12. Chart 3 compares the employment rates in the Experian and Oxford Economics forecasts and adds in the OBR rates as a further comparator:



3.13. Although the difference between the employment rates used by Experian and Oxford Economics in 2031 is only a little over 2%, that is responsible for most of the difference between the two forecasts. It follows that, had Experian assumed that the Oxford Economics employment rate assumptions represented the practical limit of the number of jobs which the population could support, they would have produced a jobs forecast that was lower and relatively close to the Oxford Economics forecast.

3.14. The following calculation illustrates how a misleading result can be obtained by applying a different set of economic activity rate assumptions to estimate the population increase needed to support a jobs forecast.

3.15. Assume that an attempt is made to estimate the increase in the 16-64 population needed to support the Experian jobs increase forecast for 2014-2031 using the OBR economic activity rates:

3.15.1. The Experian forecast envisages that the 16-64 population of the UK will increase from 41.00 million in 2014 to 42.16 million in 2031, an increase of 1.16 million people.

3.15.2. The Experian forecast also envisages that there will be 37.76 million jobs in 2031 and that these will be filled by 34.73 million people (the difference being double jobbing). Using the OBR employment rate for 2031 of 78.02%, the number of working age people needed to produce 34.73 million people in employment is:

$$\begin{aligned}
 \text{16-64 population} &= 34.73 \text{ million} \div 78.02\% \\
 &= 44.51 \text{ million}
 \end{aligned}$$

3.15.3. The 16-64 population in 2014 is 41.00 million so this calculation implies that the 16-64 population needs to increase by 3.51 million by 2031. This compares with the actual assumption made by Experian of 1.16 million, a third of the figure obtained if the OBR rates are assumed.

3.16. This example shows:

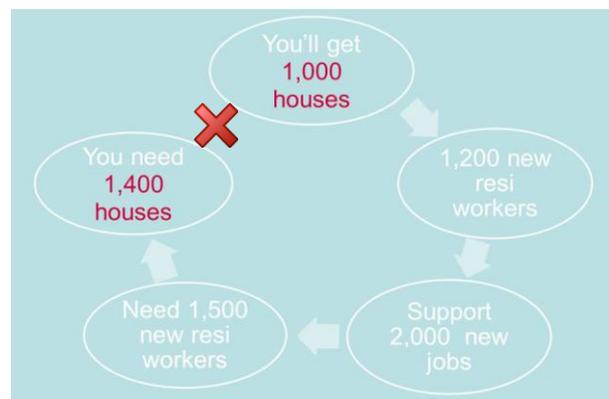
3.16.1. **The number of jobs a population will be able to support in future (i.e. the future economic activity/employment rate) is a key assumption in a jobs forecast: had a different assumption been made, a different number of jobs would have been forecast.**

3.16.2. **Using economic activity or employment rate assumptions different from those used in a forecast is likely to produce highly misleading conclusions as to the number of people and homes needed to support a jobs forecast.**

4. Conclusion

4.1. Some have been tempted to use economic activity rates derived from some other source such as the rates published by the Office for Budget Responsibility to derive alternative population projections, and then household projections, using the EEFM's employment forecasts, but, because the employment and population forecasts are inter-linked in the EEFM forecasts, it is not consistent to use the EEFM employment forecasts with alternative population assumptions. The employment and population forecasts are calculated simultaneously within the EEFM. Alternative population assumptions would lead to different employment forecasts and vice versa. Using economic activity/employment rates from another source to estimate the population (and hence homes) needed to support an EEFM jobs forecast can produce highly misleading results.

4.2. Such misleading housing calculations are warned against in the 2015 Planning Advisory Service technical advice note⁵: *“translating future numbers of workplace jobs into future resident population, based on assumptions about the factors that link workplace jobs to resident population – comprising commuting, double-jobbing, economic activity rates and*



unemployment, will often produce invalid results, because most economic forecasts already include a view of future population. The economic forecast and housing calculation taken together amount to an inconsistent statement, or self-defeating prophecy. Whether the calculation is merely circular, or logically inconsistent as shown in the graphic, it cannot produce a valid result, because its logic is faulty.”

April 2017

⁵ Planning Advisory Service Objectively Assessed Need and Housing Targets Technical Advice Note Second Edition July 2015 (Peter Brett Associates)

Appendix 2: Nottingham Outer Demographic Update Paper – May 2017

A2.1 The PPG on housing and economic development needs assessments (2a-016) notes that 'Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date'. In response to this, the three local authorities in the HMA commissioned GL Hearn (supported by JGC) to prepare a short update to the 2015 SHMA (the Nottingham Outer Demographic Update Paper – May 2017) (HOU/05). This report was developed to take account of new (2014-based) population and household projections and also more recent ONS mid-year population estimates (MYE), which at the time were to 2015.

A2.2 The conclusions of the report can be found in Section 3. In summary the report notes the following:

- The purpose of the report was to determine if a full review of OAN was necessary with the overall conclusion that a full review was not needed;
- The report notes the conclusions of the earlier SHMA (HOU/01) (an overall need over the 2013-33 period of 1,310 homes per annum (Ashfield 480, Mansfield 376 and 454 in N&S).
- It is noted that the 2014-based household projections identify a level of household growth that is around 10% higher than the previous 2012-based version;
- The report notes that recent OAN assessments have considered migration trends over a 10-year period rather than the 12-years used in the SHMA (HOU/01), and that there are a number of advantages in doing this in terms of data quality;
- The update paper also questions the use of Unattributable Population Change (UPC) within the projections and notes that using a 10-year migration period does to some extent mitigate any issues with UPC (it should be noted that the Farnsfield inspector of November 2015 did not consider it relevant to take account of UPC, although this was in the context of her only looking at needs in N&S);
- The report suggests (following a discussion of the issues) that some weight should be given to a 10-year based projection and notes that across the HMA, such a projection is not much different from the demographic conclusion of the SHMA (HOU/01) (a need for 1,262 dpa compared with 1,271 dpa in the SHMA);

- It is therefore concluded that the update supports the HMA-wide SHMA (HOU/01) figures as being of the right order of magnitude (as well as noting that figures for individual local authorities were also not much different);
- It was noted that the SHMA (HOU/01) also considered the housing need associated with economic growth as well as adjustments based on market signals and affordable housing need. It was suggested that assuming these increases remain valid and are applied to the demographic need, then the OAN is unlikely to have materially changed; and
- In conclusion, the update report suggested that the latest data did not appear to render the SHMA (HOU/01) or the OAN as out of date.

A2.3 The update report finishes by quoting from the PPG (the second part of 2a-016, the first part having been provided above), this says:

'The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued'.

A2.4 The final sentence of the Demographic Update Paper (HOU/05) notes: 'Given the discussion above, it is considered that the new data does not indicate a meaningful change and therefore figures in the SHMA continue to be valid'.

Appendix 3: Planning for the right homes in the right places: consultation proposals

- A3.1 In September 2017, the Government published a consultation document (Planning for the right homes in the right places). Of interest is that the document sets out a (long-awaited) consultation on revisions to the OAN methodology. They have also published a supporting paper detailing the revisions, as well as a spreadsheet estimating the impact of these changes for most local authorities.
- A3.2 The new approach is to ensure that enough homes are built to meet demographic growth, whilst ensuring that housing is affordable to those who live and work in the local authority. The new approach effectively takes the latest official household projections and increases these with an uplift to address affordability.
- A3.3 For the Nottingham Outer HMA, the new methodology results in a housing need for essentially the same number of homes as is suggested in the SHMA (1,320 vs. 1,310) (HOU/01); although it does show a slightly different distribution of growth. The figures are shown in the table below along with the SHMA conclusions (which are being taken forward into the three authority's Local Plans).

Comparison of OAN (per annum) – SHMA and proposed standardised methodology (housing need, dwellings per annum)		
	SHMA OAN	New Methodology OAN
Ashfield	480	519
Mansfield	376	291
Newark & Sherwood	454	510
Nottingham Outer HMA	1,310	1,320

- A3.4 Overall, it is clear that adopting the standardised methodology would not fundamentally change the situation in the HMA and with the proposed Plans moving forward, need would be met (accepting a difference of 10 units per annum, less than 1%).
- A3.5 The different distribution of the need should also not be seen as a concern. In the section titled 'Statement of Common Ground Policy' it is suggested (para 64):

We are proposing that every local planning authority produce a statement of common ground over the housing market area or other agreed geographical area where justified and appropriate. It is proposed that the statement will set out the cross-boundary matters, including the housing need for the area, distribution and proposals for meeting any shortfalls. In setting out the strategic cross-boundary issues, the statement will record where agreement has, and has not been reached.

- A3.6 This is clearly relevant to the HMA, where there is already a Statement of Common Ground in place, and this SoCG seeks to meet the full OAN across the HMA (and OAN which is virtually identical to that suggested by the proposed standardised methodology).

C2 Self-Contained Dwellings

- A4.1 National Planning Policy Guidance at paragraph 37 sets out that “Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan.”
- A4.2 The Strategic Housing Market Assessment (HOU/01) at paragraph 10.49 and 10.50 sets out the need for specialist housing solutions for older people:

10.49 Some older households will require specialist housing solutions. The SHMA identifies a need for a 3,803 additional specialist units of housing for older people between 2013-33, including sheltered and extra care homes – this represents about 15% of the need shown through the conclusions on OAN. This need forms part of the OAN.

Table 93: Need for Specialist Housing for Older Persons, 2013-33

	2013-33	Per annum
Ashfield	1,279	64
Mansfield	1,034	52
Newark & Sherwood	1,489	74
Nottingham Outer	3,803	190

10.50 In addition, the SHMA indicates a need for 1,824 bedspaces in residential care homes (Ashfield-650, Mansfield-437 and Newark and Sherwood-737). This does not form part of the household population and so is separate to the need identified for housing. It falls within a C2 use.

- A4.3 There is a level of ambiguity between C3 and C2. However, in the opinion of the LPA paragraph 10.49 of the SHMA makes it quite clear that sheltered and extra care homes form part of the OAN and it is only C2 bed spaces which are not included. The District Council does not intend to include C2 bed spaces within their housing requirement figures as this is not included within the OAN.
- A4.4 However, self-contained units, whether for C3(B) or C2 units, meet the Department for Communities and Local Government Dwelling Definition which states that “In

recent years (since 2001) a dwelling is defined (in line with the 2001 Census definition) as a self-contained unit of accommodation. Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use."

A4.5 The Amended Core Strategy (CS/01-02) in the Homes for All section includes the following supporting text at paragraphs 5.5 and 5.6:

The need for Affordable Housing has been identified by the Nottingham Outer Housing Market Strategic Housing Market Assessment in 2015. (This area is made up of Mansfield, Ashfield and Newark and Sherwood). It provides a broad overview of housing need and it concludes that:

- There is clear justification for seeking affordable housing in new residential development
- There is a need for the majority of dwellings to be 2 and 3 bedroom properties
- An increase in the number of people over 65 will see a need for more additional levels of care and support along with the provision of specialist accommodation.

Table 2 of paragraph 5.6 of the Amended Core Strategy (CS/01-02) shows:

The demand for supported housing is reflected in both market and the affordable sector:

Table 2

Supported Housing number required	Market	Affordable	Total
	430	1,002	1,432

A4.6 Core Policy 3 of the Amended Core Strategy (CS/01-02) details the Housing Mix, Type and Density and includes the following:

The District Council will seek to secure new housing development which adequately addresses the housing need of the District, namely:

~~Family housing of 3 bedrooms or more~~
 Smaller houses of 2 bedrooms or less.
 Housing for the elderly and disabled population.

A4.7 Not including self-contained C2 uses within the 5YLS not only has the potential to undermine the provisions of the Local Plan but could also lead to a less positive

approach being taken to development which is clearly needed to provide for the objectively assessed needs of Newark and Sherwood's ageing population.

- A4.8 Self-contained properties are recorded as households through the Census, are subject to individual inclusion on the council tax register which in turn feeds into the figures used for New Homes Bonus. To not include them within the housing requirement supply figures would be to under count the provision for new households being made within the District.



**Statement of Five Year Housing Land Supply
(01.04.17)**

Published July 2017

1. Introduction

- 1.1. This Five Year Housing Land Supply Statement sets out Newark and Sherwood District Council's residential land supply position as at 1st April 2017.
- 1.2. The National Planning Policy Framework (NPPF) seeks to ensure that the planning system, delivers a flexible, responsive supply of housing development land to meet objectively assessed housing needs. It requires Local Planning Authorities to identify sufficient specific deliverable sites to deliver the next five years of housing provision.
- 1.3. The NPPF at paragraph 47 sets out the expectations on maintaining a five year supply for Local Authorities. In addition to being able to demonstrate five years' worth of housing supply against housing requirements, it also requires an additional buffer to ensure choice and competition in the market for land.
- 1.4. This paper provides a detailed assessment of Newark and Sherwood's housing land supply for the period 1st April 2017 to 31st March 2022. It identifies specific sites which the council considers will deliver housing over this period. The five year land supply position is reviewed annually by the Council in April of each year. The next review will be due in April 2018.

2. Housing Requirement

- 2.1. The first step in assessing a Council's 5 year land supply is to establish the correct housing requirement against which to test the identified supply.
- 2.2. The national Planning Practice Guidance (PPG) sets out at paragraph 301 what the starting point for calculating a five year land supply is. It states:

"Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints."

- 2.3. This guidance provides a clear steer as to the most appropriate requirement figures that should be used to calculate the five year land supply position.
- 2.4. It states that the starting point for calculating a five year land supply should be the requirement figures in an adopted Local Plan. Newark and Sherwood District has an adopted Core Strategy (2011). This document set the housing requirement for the Plan period 2006 – 2026 at 14,800 dwellings. The Core Strategy was produced in the context set by the East Midlands Regional Plan (RSS). The revocation of the RSS and the introduction of the NPPF signalled a step change in the approach to be taken in providing for housing in England. Rather than top down figures being set by Regional Plans, which may have redistributed needs across the region, housing targets must now be worked out at a Housing Market Area level by Local Planning Authorities working together to establish their full objectively assessed need (FOAN). This is acknowledged in the PPG where it states that evidence from revoked regional strategies may not adequately reflect current needs.
- 2.5. The Council has embarked on a Plan Review. As part of the new Plan production work, in conjunction with the neighbouring authorities of Ashfield and Mansfield, under the Duty to Cooperate, a Strategic Housing Market Assessment (SHMA) has been produced to establish revised housing needs figures for the Housing Market Area.
- 2.6. The SHMA uses the 2012 based sub national population projections as the starting point for the setting of the OAN. The 2012-based population and household projections suggest a need for about 1,074 dwellings per annum to be provided across the HMA, or 399 dpa for Newark & Sherwood (taking into account the 2013 midyear population data).
- 2.7. The projections are the starting point for setting the OAN, the PPG states that a SHMA should test the suitability of these figures in the local context. The SHMA carried out a review of past migration trends and unattributable population growth. Combining these projections suggests a housing need of 1,271 dwellings across the HMA, with figures of 469 in Ashfield, 356 in Mansfield and 446 in Newark & Sherwood. These are a reasonable local alternative to the nationally produced projections.

- 2.8. The demographic projections were also tested against various other factors which impact upon housing need. The first of these is economic growth and the impact of job provision and therefore housing requirements. The SHMA was produced at the same time as the Economic Land Feasibility Study which is looking at employment land requirements. GL Hearn used jobs data from this study to inform the SHMA. The analysis indicates that there would not be a need to adjust upwards the housing need (from the demographic-led projections) to take account of economic factors and that the likely job growth could be met by the expected demographic growth
- 2.9. The SHMA has also considered any potential adjustment that may be needed to the OAN as a result of market signals and the need for affordable housing. In combination these two factors are considered to represent a modest case for considering an adjustment to housing provision.
- 2.10. Following all of the above analysis the Study identified that the final OAN for Newark & Sherwood is **454 dwellings per annum**, which over the period the SHMA covers, 2013 to 2033, is 9,080 dwellings. The final SHMA was published in October 2015.
- 2.11. An appeal was held during November 2015 against the refusal of Newark and Sherwood District Council to permit a planning application for 48 dwellings on land at Southwell Road, Farnsfield, Nottinghamshire (APP/B3030/W/15/3006252). At the appeal the Council sought to rely on the SHMA as the most reasonable and up to date requirement figure for assessing the Council's 5 year land supply position. The appellants at this appeal argued that job forecasts contained in Employment Land Feasibility Study (ELFS) (obtained by NLP from Experian) may have underestimated the level of likely job growth in Newark and Sherwood and also that the participation rates used for older workers were too optimistic. They put forward a separate assessment of housing need identifying a level of housing growth of between 500-550 dpa.
- 2.12. The Inspector accepted the appellants argument, allowed the appeal and planning permission was granted. The rationale behind her decision is set out in the [Inspector's Report](#) of the appeal.
- 2.13. The Council acknowledges that the Inspector's decision is a material consideration in decision making, however, the council does not agree with the Inspectors reasoning in this matter.
- 2.14. In July 2016 the HMA Councils of the Nottingham Core HMA and the Nottingham Outer HMA¹ issued a [position statement](#) outlining their response to the Farnsfield Inspector's decision. The paper sets out the relevant conclusions from the Inspector's report followed by the response of the HMA Councils. The key points are highlighted below.
- 2.15. The Inspector commented that *"taking into account past trends and the level of economic growth seen in Newark and Sherwood since 2012, it appears that the level of economic growth anticipated within the HMA as a whole may underestimate that likely to occur in N&S"*.

¹ Ashfield District Council, Broxtowe Borough Council, Erewash Borough Council, Gedling Borough Council, Mansfield District Council, Newark and Sherwood District Council, Nottingham City council, Rushcliffe Borough Council

- 2.16. The HMA Councils consider that the forecast shift in terms of the distribution of jobs between the two HMAs (a greater focus on employment within the Nottingham Core) would not be predicted by relying solely on past trends in employment or the take up of employment space. Also the ELFS report takes full account of past employment delivery rates in formulating its conclusions. Newark & Sherwood's employment figures have been boosted as a direct result of the Dixons Mastercare (Know How) development which at 19.05ha comprised 46% of the District's entire B2/B8 industrial land completions over the 9 year assessment period. If this development were to be excluded from the figures, the net annual completion rate would fall from 3.67 ha to just 1.29 ha. This level of inward investment and associated increase in employment levels are seen as a one off development and should not be used as an indicator of future trends.
- 2.17. The Inspector commented that *"even if the level of economic growth projected within the SHMA is shown to be appropriate, it appears that the economically active proportion of the population would have to increase significantly amongst some cohorts in order to support projected future increases in jobs, unless an increase in inward migration occurred"*.
- 2.18. The HMA Councils consider the Inspector is wrong in assuming that the forecast level of jobs would stay constant if economic activity rates do not increase as assumed in the model. They consider that there would be fewer jobs forecast through the integrated suite of models locally, regionally and nationally. This question was put to Experian who agreed with the HMA. Experian have also carried out more detailed analysis on employment activity and the aging population and the HMA Councils are confident the participation rates adopted are sound.
- 2.19. The Inspector commented that *"I am not persuaded that the projected increases in economic activity are sufficiently realistic amongst all cohort s. [...] As a result, whilst taking into account the advice in the PPG referred to above and recognising that economic growth projections and the resulting implications for housing need are difficult to quantify, I consider that the balance of the evidence provided suggests that some further upward adjustment to the demographic housing need figures is likely to be justified in this case"*.
- 2.20. The HMA Councils consider that the past is not necessarily a guide to the future and cannot indicate how new policies and social changes are likely to impact on economic growth. Accepted drivers of change such as changes to state retirement age, decline of work based pensions, private pensions and longevity are key drivers towards greater participation of older workers in the workforce.
- 2.21. The report concludes that *"there are inherent uncertainties in forecasting future levels of economic output and jobs. However, the scenarios based on employment forecasts are able to make informed assumptions about likely changes in future particularly those of a demographic nature such as an aging workforce but also changes in the sectoral distribution of jobs with the shift to service based jobs and increasing dominance of Nottingham City as a service centre location. The HMA Councils consider that the ELFS Policy-on forecasts reflect the policy aspirations of the various key stakeholders and provide a robust basis for the future planning of the two HMAs"*
- 2.22. Whilst the SHMA has not yet been tested at examination, it is considered that it provides an objective and evidence based assessment of need. The Council has utilised the findings of the SHMA alongside a range of other evidence to determine the emerging Plan Review

housing target. The figure has further been considered through the Sustainability Appraisal as part of the Integrated Impact Assessment of the emerging Plan.

2.23. The proposed housing requirement of 454 dpa was included in the Preferred Approach (Strategy) Consultation that was conducted in July 2016 and reflected in the Sites and Settlements Paper consulted on in January 2017. It is included in the Publication version of the Plan Review Core Strategy that is due to be considered by the Council on the 11th July. The Publication version of the Plan is due to be published for representations the week commencing 17th July 2017. A specially arranged full Council meeting will consider the representations made with an anticipated submission to the Planning Inspectorate later this year.

2.24. A large amount of work has been undertaken, including consideration of a range of other issues (such as sustainability, landscape and ecology) to establish the revised housing target in the Plan review. Following this, and due to the progress that has been made through the Plan making process, the Council is confident that this is the most appropriate figure against which to assess housing land supply.

2.25. Indeed, using an emerging Local Plan target based on an as yet untested FOAN instead of out-of-date regional targets has been supported in several S78 appeal decisions around the country². The council considers that the housing requirement figures in the emerging Local Plan based on the up-to-date SHMA provide a more appropriate assessment of need than the Core Strategy.

Buffer

2.26. The NPPF requires that Local Planning Authorities apply an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, Local Planning Authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the required supply, and to ensure adequate market choice and competition for land.

2.27. The table below sets out the total completions since 2006.

Year	Actual Completions (net)	Core Strategy Target	Shortfall against Core Strategy Target	Emerging Local Plan Target	Shortfall against Emerging Local Plan Target
2006/2007	481	740	-259		
2007/2008	330	740	-410		
2008/2009	346	740	-394		
2009/2010	403	740	-337		
2010/2011	431	740	-309		
2011/2012	293	740	-447		
2012/2013	366	740	-374		
2013/2014	274	740	-466	454	-180

² Examples include: [APP/Y2620/W/14/3000517](#) and [APP/C3240/W/15/3003907](#)

Year	Actual Completions (net)	Core Strategy Target	Shortfall against Core Strategy Target	Emerging Local Plan Target	Shortfall against Emerging Local Plan Target
2014/2015	447	740	-293	454	-7
2015/2016	396	740	-344	454	-58
2016/2017	571	740	-169	454	+117
Total	4,338	8,140	-3,802	1,816	-128

2.28. When assessing delivery against the Core Strategy requirements there has been under-delivery in all years since adoption. If assessing delivery against the emerging Local Plan target there has been under-delivery in all but the most recent monitoring year where there has been over-delivery in effect cancelling out the under-delivery for the previous two years. Despite this more recent positive delivery the Council still considers it necessary to apply the 20% buffer to the five year land supply calculation.

Shortfall

2.29. As there has been under-delivery in recent years against the requirement the Council has accumulated a shortfall.

2.30. If using the OAN requirement: as stated in the PPG *“Objective current assessments of need will reflect the consequences of past under or over delivery of housing and should therefore address the question of how to deal with past delivery rates”*. Therefore the Council considers that only shortfall accrued since 2013, the base date of the SHMA period, should be addressed. Between 2013 and 2017 1,688 dwellings have been completed in Newark & Sherwood out of the required 1,816. This has led to a shortfall of 128 units.

Requirement Summary

Housing Target 2017 - 2022 (454*5)	2,270
Housing Shortfall (2013 - 2017)	128
Housing Requirement 2017 - 2021 (20% buffer applied to target + shortfall)	2,878
Annualised Housing Requirement	576

3. Housing Supply

3.1. Paragraph 47 of the NPPF sets out the requirements for a housing site to be considered a deliverable site for the purposes of the 5 year land supply. It states that in order for a site to be considered deliverable it should be:

- Available – the site is available for development now
- Suitable – the site offers a suitable location for development and would contribute to the creation of sustainable, mixed communities
- Achievable – there is a reasonable prospect that housing will be delivered on the site within five years

3.2. In addition to the NPPF, the PPG identifies the type of sites which can be considered against these criteria. It states that deliverable sites can include those that are allocated for housing in a development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years. It also states that a windfall allowance may be included, where appropriate.

3.3. For Newark & Sherwood, the housing land supply is made up of the following components:

- Sites with planning permission: large, medium and small sites with planning permission are considered deliverable until permission expires or unless there is clear evidence that schemes will not be implemented within five years
- Core Strategy Allocations: a proportion of which are considered deliverable within the next five years
- Allocations & Development Management DPD Allocations: a proportion of which are considered deliverable within the next five years
- Plan Review Core Strategy Additional Strategic Site Allocation: a proportion of the site is considered deliverable within the next five years
- Windfall allowance

Sites with planning permission

3.4. There are currently 5,598 units on extant permissions in the District, only 2,200 of these are counted in the 5 year supply. Sites have been considered as either large, medium or small sites. Large sites are those for 10 or more dwellings, medium sites are those between 5 and 9 units and small sites are those for less than 5 dwellings

Large sites with planning permission

3.5. In line with the guidance in the NPPF large sites with planning permission are considered deliverable until permission expires or there is clear evidence that schemes will not be implemented within 5 years.

3.6. To further support the assumed deliverability of large sites with planning permission the council has engaged with developers of the sites who have assisted in scoping the delivery trajectory of their site. For a number of large sites development is profiled beyond the 5 year period; there is no restriction to prevent these sites delivering faster if market conditions allow.

3.7. There are also a number of extant large site permissions which the council has not included in the supply as they have had permission for a number of years without movement on the site or where the Council anticipates a lapse in the permission shortly or there are two

applications on the same site (where one may prevent housing delivery). This discounting of sites where there is less certainty adds robustness to the supply.

Medium and small sites with planning permission

- 3.8. Medium sites are those between 5 and 9 units and small sites are those for less than 5 dwellings. For medium sites the same approach has been adopted as for large sites. For small sites the total number of units permitted has been discounted by 20% to allow for potential lapses and sites where delivery may take more than five years to complete (e.g. self build plots). This discount is considered to be a robust approach to reflect potential lapses and slow build out.

Core Strategy Allocations

- 3.9. The three strategic urban extensions at Newark were allocated in the core strategy in 2011. There has been delay in bringing these sites forward when compared with the trajectory as set out in the Core Strategy, however many of the hurdles that had prevented delivery have now been resolved and delivery is anticipated to accelerate in coming years. The allocations counted in the five year supply are all being rolled forward into the new Emerging Core Strategy as part of the Plan review.
- 3.10. **NAP2A Land South of Newark:** the Core Strategy envisaged this development taking place in four phases of 750 units each. This approach has been revised in light of the infrastructure asks of the development (reflected in the Local Plan review). In 2011 outline permission was granted for 3,150 units, along with detailed permission for the Southern Link Road (SLR).
- 3.11. In March 2014 the HCA agreed an £11.2 million loan to the developer. This was predicated on the physical delivery of a section of the SLR in order to unlock housing delivery. A number of loan condition precedents were set which included most critically the need to have let an infrastructure contract to build the road. The agreement with the HCA was also on the basis of delivering the A1-Bowbridge Road section of road. This was not identified in Phase 1 as originally approved. A revised S73 application was therefore also approved.
- 3.12. In July 2014 the Local Growth fund committed in principle £7 million to unlock the allocation, NSDC confirmed a grant of £2.5 million in addition to the LEP money – a total grant of £9.5m. The S73 application was approved in Jan 2015. The HCA loan was released in March 2015 with works on the first phase of the SLR starting in May 2015.
- 3.13. Phase 1 of the SLR is now largely completed; those parts that have been completed are available for public use. As a result delivery of 699 units within phase 1 can now be released. This forward delivery of significant infrastructure will assist in unlocking housing delivery across the wider site.
- 3.14. The first reserved matters application for 173 units has been approved. Most of the pre-site works have been carried out and housing start on site is expected this summer.
- 3.15. A second reserved matter application is anticipated shortly for c200 units.
- 3.16. Funding for phase 2 and 3 of the road is currently being sought from the Highways England Housing Growth Fund. Irrespective of the delivery timescales for the latter phases of the SLR the trigger points in the S106 set out that 699 units can be built out before phase 2 must commence. Therefore housing at the A46 end of the site could be brought forward in advance of the latter phases of the road being complete.

- 3.17. Whilst the Council recognises that there has been delay in this site coming forward there are now clear signs that delivery is imminent.
- 3.18. **NAP2B Land East of Newark:** William Davis Ltd. are currently preparing a site wide masterplan together with an application for the first phase of development (320 units). William Davis have confirmed to the Council that they have a legal interest in all the land needed to deliver this phase.
- 3.19. The trajectory assumes that an outline planning application is submitted this autumn and that RM for a first phase can be approved early in 2018. The intention is that William Davis will build half of the site and sell the remainder to one other builder so that there will be 2 builders on site at the same time.
- 3.20. **NAP2C Land around Fernwood:** There are various landowners/land interests which make up the site allocation of Land around Fernwood. Following option deals by some landowners with national housebuilders the principal parties involved can be summarised as follows:
- Barratt/David Wilson Homes (BDW) – having built out the majority of the existing Fernwood development BDW have legal interest over the northern portion of the site allocation, as reflected in the application site (Ref 14/00465/OUTM) for 1,050 dwellings and associated infrastructure
 - Persimmon Homes – have a legal interest over the southern portion of the allocation. There has been a Planning Committee resolution to grant consent (16/00506/OUTM) subject to a section 106 agreement for 1,800 dwellings and associated infrastructure. It is expected that the section 106 agreement will be signed in summer 2017.
 - Larkfleet Homes – have a legal interest in the central portion of the allocation and carried out pre-submission consultation on a scheme for 350 units. A planning application is expected in July 2017
 - Strawsons – own the land to the south west of the site between the A1 and Great North Road, pre-application discussions regarding a 300 unit scheme have taken place
- 3.21. The highways infrastructure needed to support all development around Fernwood (i.e. all of the intended business uses and all of the residential dwellings) requires works to the bridge over the A1. This is in addition to highway works required in association with each of the developments detailed above. In July 2016 the CIL 123 list was amended to incorporate a contribution towards funding for the A1 overbridge widening. Following this there are no strategic infrastructure impediments to developments taking place in advance of the overbridge delivery, which will come forward as required once sufficient CIL receipts (and any additional funding) is received.

Allocations & Development Management DPD Allocations

- 3.22. The allocations from the Allocations & Development Management DPD have been reviewed as part of the work on the Local Plan review. A number of allocations are no longer being pursued and are not counted in the five year land supply. The other allocations have been re-assessed and those being taken forward into the new Plan have clear delivery strategies in place. The Council has actively engaged with the owners and developer of these sites who have assisted in scoping the delivery trajectory for these sites.

Plan Review Core Strategy Additional Strategic Site Allocation - Thoresby Colliery

3.23. The emerging Plan contains a new strategic allocation for 800 units at the former Thoresby Colliery. The Council is committed to the delivery of this site; a joint consultation with the developers of the site was carried out alongside the Sites and Settlements consultation earlier this year (11th February 2017). The developers are progressing this development expediently with clearance of the site currently taking place. A planning application (16/02173/OUTM) was submitted at the end of December 2016 and is currently pending a decision.

Windfall Allowance

3.24. The final element of supply is a windfall allowance. The NPPF makes clear that Councils may include a windfall allowance as part of their supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply.

3.25. The council has a clear track record of windfall delivery as shown in the table below which shows completions on sites that were not allocated, excluding those which occurred on garden land.

Year	Small sites (net windfalls)	Large sites (net windfalls)	Total net windfall completions	Total Completions	% of total completions that are windfalls
2012/2013	105	173	278	366	76
2013/2014	46	146	192	274	70
2014/2015	97	268	365	447	82
2015/2016	98	189	287	396	72
2016/2017	64	309	373	571	65
Total	410	1,085	1,495	2,054	
Average	82	217	299	410	73

3.26. The above table is clear; windfall delivery makes a significant contribution towards completions in Newark and Sherwood District. On average 299 windfall completions are achieved every year.

3.27. It is acknowledged that at the base date of the five year supply calculation a number of these windfall units will already have permission and would be counted in sites with planning permission. It is important to take account of committed windfall delivery across the five year period to ensure that the Council does not double count these sites that are already in the pipeline. As a result, it is proposed to only include a windfall allowance for the latter two years of the five year period, an annual allowance of 50 dwellings has been applied for the last 2 years of the five year period. Considering the track record of windfall delivery this is considered to be a conservative figure.

3.28. The council is confident that windfall delivery will continue to provide a reliable source of supply in the next five year period. The current Local Plan provides scope for infill windfall delivery in urban areas, within the main built up areas of villages where local need is identified, and as rural affordable housing exceptions. The emerging Local Plan review rolls forward this approach whilst providing greater opportunity for sustainable development within villages in the rural areas. Furthermore, flexibility afforded by policies in the NPPF, a

more permissive stance regarding change of use from commercial to residential and changes to permitted development rights mean that windfall delivery is likely to continue.

4. Conclusions

- 4.1. As established in section 3 of this paper the Council has a supply of 3,567 deliverable dwellings which are expected to be built out over the next five year period. These include sites with planning permission, allocations and windfall sites.
- 4.2. To assess whether the Council has a five year supply of housing land the amount of deliverable supply must be compared to the requirement as established in section 2 of this paper.

Annualised Housing Requirement	Total annual housing requirement (2017 - 2022) including 20% buffer and meeting shortfall in the next 5 years		576
Total Deliverable Housing Supply	Large sites with planning permission	1,725	3,567
	Medium and small sites with planning permission	475	
	Core Strategy Allocations	500	
	Site Allocations DPD Allocations	707	
	Plan Review Core Strategy Additional Strategic Site	60	
	Windfall allowance	100	
Total five year supply	Supply / Requirement (3,567 / 576)		6.2

- 4.3. As can be seen from the calculations above using the annual housing requirement from the emerging Local Plan, including a 20% buffer and meeting the shortfall within the next five years the Council can demonstrate in excess of a five year supply of housing land
- 4.4. This statement sets out the Council's position as at 1st April 2017. At a minimum the Council will review the housing land supply situation on an annual basis.

5. Appendix – Supply details

Large sites with planning permission

Allocation reference	Planning Application Reference	Site Address	Total Proposed dwellings (net)	Completions as at 31.03.17	Units remaining as at 31.03.17	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	Counted in 5 year period
NAP2A	10/01586	Bowbridge Lane (Land South of Newark)	2,977	0	2,977			40	67	80	187
NAP2A	16/02120/RMAM	Bowbridge Lane (Parcel 1)	173	0	173	0	36	40	48	49	173
BL/HO/2	13/01800/OUTM	Belle Vue Lane	13	0	13		13	8			21
Co/MU/1	12/00895/OUTM	Station Road (Braemar Farm)	140	0	140		20	40	40	40	140
ED/HO/1	14/01596/OUTM	Rufford Road	72	0	72	16	15	15	21		67
FA/MU/1	13/01072/OUTM	Ash Farm Cockett Lane	106	69	37	37					37
FA/HO/1	14/01576/OUTM	The Ridgeway/Milldale Road (Land off)	60	0	60		10	30	20		60
NUA/HO/8	15/02299/FULM	Bowbridge Road (Land at)	60	0	60	60					60
OB/HO/1	13/00743/OUTM	North of Wellow Road	147	52	95	30	30	35			95
OB/HO/3	14/00669/FULM	Whinney Lane (Land at Ollerton and Bevercotes Miners Welfare)	88	37	51	25	26				51
N/A	13/01256/OUTM	Land off Warsop Lane	130	35	95	35	35	25			95
SO/HO/6	15/00994/FULM	Burgage Lane (Rainbows)	32	0	32	11	11	10			32
SO/HO/5	15/00475/OUTM	Lower Kirklington Road (High Gables)	12	0	12			6	6		12
N/A	13/00689/FULM	Nottingham Road	34	33	1	1					1
N/A	12/00965/RMAM	Cavendish Way (Cavendish Park)	109	0	109		30	30	30	17	107
N/A	14/01308/FULM	Cavendish Way (Cavendish Park)	92	60	32	32					32
N/A	08/01905	Cavendish Way (Cavendish Park)	188	168	20	20					20
N/A	14/02054/VAR	Cavendish Way (Cavendish Park)	180	0	180			30	30	30	90
N/A	10/01158	Low Street (Pitomy Farm)	31	23	8	2	3	3			8
N/A	16/00135/FULM	High Stret (Edwinstowe House)	34	0	34		17	17			34

Allocation reference	Planning Application Reference	Site Address	Total Proposed dwellings (net)	Completions as at 31.03.17	Units remaining as at 31.03.17	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	Counted in 5 year period
N/A	16/00313/OUTM	Ollerton road (Rear of The Villas)	35	0	35			10	12	13	35
N/A	05/01839	Main Street	32	31	1	1					1
N/A	14/01469/OUTM	Southwell Road	48	0	48		24	24			48
N/A	14/01542/CPRIOR	Barnby Gate (14)	11	0	11	11					11
N/A	10/01256/FULM	Beacon Hill Road	189	112	77	35	35	7			77
N/A	15/00036/FULM	Land at 207 Hawton Road	20	0	20		10	10			20
N/A	08/02221/FULM	Kings Road (Mount School)	23	12	11	11					11
N/A	16/00124/FULM	Land off Millgate	34	0	34				34		34
N/A	16/00741/FULM	Mount Lane (Former Piano School)	10	0	10			10			10
N/A	15/01307/FULM	17 Northgate	12	0	12				12		12
N/A	02/01094	Potterdyke/Pelham Street	14	0	14		7	7			14
N/A	05/02273/FULM	Forest Road (Sherwood Energy Village)	184	15	169				34	45	79
N/A	16/00902/FULM	Sherwood Energy Village (Land opposite Darwin Court, Darwin Drive)	51	0	51		6	20	25		51
			5,382	647	4,735	327	328	417	379	274	1,725

Total delivery within five years from large sites with planning permission: 1,725

Medium and small sites with planning permission

Planning Application Reference	Site Address	Total Proposed dwellings (net)	Completions as at 31.03.17	Units remaining as at 31.03.17	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	Counted in 5 year period
14/02186/FUL	70 Bullpit Road	7	0	7		4		3		7
14/01714/FUL	69 Main Street	9	0	9			6	3		9
05/00775	The Crescent	7	0	7						0
14/01883/FUL	Adj Woodbank Close	6	0	6	3	3				6
12/01417/OUT	Belle Vue Lane (South of the Red House)	5	1	4	4					4
06/01847	Main Street (Park Farm)	8	0	8						0
16/00382/FUL	Norwell Road (Land at)	6	0	6	6					6
16/01973/FUL	Forest Road (Land between 139-141)	8	0	8		2	2	2	2	8
16/01974/FUL	Forest Road (Land between 177-179)	9	0	9			3	3	3	9
16/01972/FUL	Forest Road (Land between 67-69)	8	0	8		2	2	2	2	8
15/01153/FUL	Mansfield Road (former squinting cat PH)	9	0	9				5	4	9
14/01242/FUL	Vicars Court	8	0	8		2	2	2	2	8
15/00035/FUL	Vicars Court	6	0	6			2	2	2	6
15/02253/FUL	Main Street (The Plough)	6	0	6		3	3			6
11/00219	Kirkington Road (Ponds Farm)	8	1	7	1	2	2	2		7
16/00883/FUL	Tenters Lane (Tenters Cottage)	4	0	4		2	2			4
16/01772/FUL	School Lane (Hall Farm)	5	0	5				2	3	5
15/00122/FUL	Broomfield Lane (Silverwood)	5	0	5			2	3		5
05/02562	Station Road (Enfield House)	4	3	1					1	1
11/01046	Castlegate (Ye Olde Market)	9	0	9						0
16/00314/FUL	George Street (Newark Boys Club)	7	0	7		7				7
16/01912/FUL	George Street (Unit 3, The Old Maltings) (Basement Lighting)	6	0	6				6		6

Planning Application Reference	Site Address	Total Proposed dwellings (net)	Completions as at 31.03.17	Units remaining as at 31.03.17	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	Counted in 5 year period
16/02164/FUL	Grange Road (Garages at)	6	0	6		6				6
14/00292/FUL	St Mary's rooms	5	0	5	5					5
16/02135/FUL	Lincoln Road (96)	5	0	5			2	3		5
04/02239	London Road (65A)	5	0	5						0
17/00041/FUL	Meldrum Crescent (Garage Court)	8	0	8	4	4				8
11/00228	Navigation Yard (Thorpe's Warehouse)	9	0	9		4	5			9
17/00069/FUL	Northgate (14, Northgate House)	8	0	8			4	4		8
15/00984/FUL	Adj Darwin Drive	7	0	7	3	4				7
16/00372/FUL	Brake Lane (Boughton Pumping Station)	9	0	9			9			9
06/00635	Kirk Drive (Units 1 to 4)	9	4	5			3			3
891091	Main Street (Highland Farm)	5	3	2						0
14/00510/FUL	Red May Ind Est	6	0	6					6	6
16/01459/FUL	Old Great North Road (The Nags Head)	6	0	6		2	4			6
14/01262/FUL	Coach & Horse Nottingham Road	5	3	2	2					2
16/00529/FUL	Nottingham Road (Priory Farm)	5	0	5		2	3			5
810282	Main Road (Chapel Farm)	8	1	7						0
14/02020/FUL	Epperston Rd (adjacent Brookfield) LO/HO/2	5	0	5	2	3				5
	Small Full BF	166	4	162	27	27	27	27	27	135
	Small Full GF	141	12	129	22	22	22	21	21	108
	Small Out BF	17	0	17			4	4	4	12
	Small Out GF	21	0	21			5	5	5	15
		606	32	574	79	101	114	99	82	475

Total delivery within five years from medium and small sites: 475

Core Strategy Allocations

Core Strategy Allocation		2017/18	2018/19	2019/20	2020/21	2021/22	Counted in 5 year period
NAP 2A	Land South of Newark						Under sites with planning permission
NAP 2B	Land East of Newark			25	60	80	165
NAP 2C	Land Around Fernwood		10	65	130	130	335
Total		0	10	90	190	210	500

Total delivery within five years from Core Strategy Allocations: 500

Allocations & Development Management DPD Allocations:

ADM DPD	Address	2017/18	2018/19	2019/20	2020/21	2021/22	Counted within 5 Years
NUA/HO/6	Land between 55 and 65 Millgate					10	10
NUA/HO/10	Land North of Lowfield Lane			10	35	35	80
ST/MU/1	Land to the East of Hemplands Lane			15	17	18	50
SO/HO/1	Land East of Allenby Road			30	35		65
SO/HO/2	Land South off Halloughton Road		8	15	15		38
SO/HO/4	Land East of Kirklington Road			15	15	15	45
SO/HO/7	Southwell Depot				5	10	15
LO/HO/1	Land adjacent to 28 Epperstone Road				2	3	5
OB/HO/2	Land adjacent to Hollies Close				25		25
OB/MU/1	Land at the rear of Petersmiths Drive			15	30	30	75
BI/HO/2	Noble Foods				25	30	55
BI/MU/1	Land to the East of Kirklington Road			15	20	20	55
RA/HO/1	Land North of Top Street			5	25	24	54
RA/HO/2	Land to the East of Warsop Lane (residual)				30	30	60
BL/HO/3	Land South of New Lane			15	30	30	75
	Total	0	8	135	309	255	707

Total delivery within five years from Allocations & Development Management DPD Allocations: 707

Plan Review Core Strategy Additional Strategic Site Allocation:

Ref	Address	2017/18	2018/19	2019/20	2020/21	2021/22	Counted within 5 Years
N/A	Thoresby Colliery				10	50	60
	Total	0	0	0	10	50	60

Total delivery within five years from Plan Review Core Strategy Additional Strategic Site Allocation: 60

Windfall Allowance:

Ref	Address	2017/18	2018/19	2019/20	2020/21	2021/22	Counted within 5 Years
N/A	N/A				50	50	100
	Total	0	0	0	50	50	100

Total delivery within five years from windfalls: 100

Table 1.2 Contested Sites

Site Ref.	LPA Statement of 5YHLS Position	LPA Revised Position	Pegasus Original Position	Pegasus Revised Position
Large Sites with Planning Permission				
NAP2A (10/01586/OUTM)	187	187	147 (-40)	64 (-123)
NAP2A (16/2120/RMAM)	173	173	124 (-49)	N/C
CO/MU/1	140	140	80 (-60)	80 (-60)
NUA/HO/8	60	60	0 (-60)	0 (-60)
Difference from 5YHLS Statement (+/-)	0	0	-209	-243
Core Strategy Allocations				
NAP 2B	165	85 (-80)	0 (-165)	0 (-165)
NAP 2C	335	335	75 (-260)	255 (-80)
Difference from 5YHLS Statement (+/-)	0	-80	-425	-245
Allocations & DM DPD				
NUA/HO/10	80	80	55 (-25)	55 (-25)
ST/MU/1	50	50	45 (-5)	N/C
SO/HO/4	45	45	30 (-15)	30 (-15)
SO/HO/7	15	15	0 (-15)	9 (-6)
BI/HO/2	55	55	0 (-55)	25 (-30)
BI/MU/1	55	55	35 (-20)	N/C
BL/HO/3	75	75	60 (-15)	40 (-35)
Difference from 5YHLS Statement (+/-)	0	0	-150	-111
Plan Review				
Thoresby Colliery	70	235	235	235
Difference from 5YHLS Statement (+/-)	0	+175	+175	+175
Total Difference from LPA 5YHLS Statement	0	+95	-609	-424
Total Supply	3,567	3,662	2,958	3,143

* N/C indicates the sites which are no longer contested

** The figures within the brackets indicate the reduction in unit numbers from the Council's Statement of Five Year Housing Supply (2017)

Table 1.3 Housing Supply Position – Various OAN

	LPA Revised Position 454 OAN	LPA Revised Position 500 OAN	LPA Revised Position DCLG 510 OAN	LPA Revised Position 550 OAN	Pegasus Revised Position 454 OAN	Pegasus Revised Position 500 OAN	Pegasus Revised Position DCLG 510 OAN	Pegasus Revised Position 550 OAN
5-year Requirement 2017/18 – 2021/22	2,270	2,500	2,550	2,750	2,270	2,500	2,550	2,750
Backlog	128	312	352	512	128	312	352	512
Framework 20% Buffer	480	563	580	653	480	563	580	653
Total 5 Year Requirement	2,878	3,375	3,482	3,915	2,878	3,375	3,482	3,915
Annual 5 Year Requirement	576	675	697	783	576	675	697	783
Housing Supply 2017/18 – 2021/22	3,662	3,662	3,662	3,662	3,143	3,143	3,143	3,143
5 Year Supply	6.36	5.42	5.25	4.67	5.45	4.65	4.50	4.01
Total Housing Supply minus 10% Lapse Rate	3,295	3,295	3,295	3,295	2,828	2,828	2,828	2,828
5 Year Supply (inc. Lapse Rate)	5.72	4.88	4.72	4.20	4.90	4.18	4.05	3.61

Case No: C1/2016/2001

Neutral Citation Number: [2017] EWCA Civ 1643
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE OUSELEY
[2016] EWHC 968 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 October 2017

Before:

Lord Justice Jackson
Lord Justice McCombe
and
Lord Justice Lindblom

Between:

St Modwen Developments Ltd.

Appellant

- and -

- (1) Secretary of State for Communities and
Local Government**
(2) East Riding of Yorkshire Council
(3) Save Our Ferriby Action Group

Respondents

Mr Christopher Young and Mr James Corbet Burcher (instructed by **Irwin Mitchell LLP**) for
the **Appellant**

Mr Richard Honey (instructed by **the Government Legal Department**) for the
First Respondent

Mr Paul Tucker Q.C. and Mr Freddie Humphreys (instructed by **East Riding of Yorkshire
Council**) for the **Second Respondent**

Ms Emma Reid-Chalmers (**Pro bono** instructed by **direct access**) for the **Third Respondent**

Hearing date: 8 June 2017

Judgment

Lord Justice Lindblom:*Introduction*

1. The complaint in this appeal is that the Government's planning policy for housing development in the National Planning Policy Framework ("the NPPF") – in particular, the policy for a five-year supply of housing land in paragraph 47 – was misunderstood and misapplied in a decision on a statutory appeal against the refusal of planning permission. The appeal is by no means the first of its kind. It raises no new point of law.
2. The appellant, St Modwen Developments Ltd., appeals against the order of Ouseley J., dated 28 April 2016, dismissing its application under section 288 of the Town and Country Planning Act 1990 challenging the decisions of the first respondent, the Secretary of State for Communities and Local Government – in a decision letter dated 25 June 2015 – to dismiss two appeals under section 78 of the 1990 Act against the refusal of planning permission by the second respondent, East Riding of Yorkshire Council, for a large development of new housing on land at Brickyard Lane, Melton Park, about 13 kilometres to the west of Hull. The third respondent, Save Our Ferriby Action Group, was an objector to the proposals.
3. The appeal site extends to about 38 hectares, in three parcels, the largest of which is about 35 hectares to the south of Monks Way, straddling Brickyard Lane. Access to it is gained from the A63 trunk road to its north. The village of Melton lies to the north of the A63, the village of North Ferriby to the south, the town of Elloughton-cum-Brough about two kilometres to the west. Much of the site had been allocated for employment development in the development plan – the Beverley Borough Local Plan (1996) and the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005) – and also in the emerging East Riding Local Plan. The first of the two schemes before the Secretary of State, the scheme in "Appeal A", was for up to 510 dwellings; the second, in "Appeal B", for up to 390 dwellings, with 7.7 hectares of land for "employment" uses. The council's reasons for refusing planning permission, for both schemes, referred to the loss of employment land, conflict with the settlement hierarchy, and prejudice to the progress of the emerging local plan. Both appeals were recovered for determination by the Secretary of State. They were heard at an inquiry that lasted 20 sitting days in November 2013 and April, May and August 2014, and was eventually closed in September 2014. The inspector submitted her report to the Secretary of State on 2 March 2015, recommending that both appeals be dismissed. In his decision letter the Secretary of State agreed with that recommendation and accordingly dismissed both appeals.
4. The challenge before Ouseley J. was pursued on four grounds, all of which he rejected. The appeal before us is more confined. I granted permission to appeal on 11 November 2016. When I did so, I said the argument presented on behalf of St Modwen seemed "more elaborate than it need be". I accepted, however, there were matters fit for consideration by this court – in particular, the concept of "a supply of specific deliverable sites ..." in paragraph 47 of the NPPF.

The issues in the appeal

5. There are seven grounds of appeal, corresponding broadly to the first of the four grounds pursued in the court below – described by Ouseley J. as “Ground 1: Housing land supply”. At the hearing counsel agreed that those seven grounds present us with three main issues, which relate closely to each other, but in a logical sequence are these:
 - (1) Did the Secretary of State misinterpret or misapply government policy for the supply of housing in paragraph 47 of the NPPF, and, in particular, the concepts of “supply” and “delivery”, and were his relevant reasons clear and adequate (grounds 5 and 6)?
 - (2) Did the Secretary of State misdirect himself, or fail to provide clear and adequate reasons, in his conclusions on the council’s housing trajectory (grounds 1 to 4)?
 - (3) Did the Secretary of State err in law in his conclusions on the council’s record of housing delivery (ground 7)?

The principles on which the court will act in a section 288 challenge

6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) (at paragraph 19) I set out the “seven familiar principles” that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:
 - “(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
 - (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).
 - (3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an

application for planning permission is free, “provided that it does not lapse into *Wednesbury* irrationality” to give material considerations “whatever weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector’s decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 74, at paragraph 6).

- (4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).
 - (5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).
 - (6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).
 - (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”
7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasized the limits to the court’s role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same

vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers’ reports to committee. The conclusions in an inspector’s report or decision letter, or in an officer’s report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63).

Paragraphs 47 and 49 of the NPPF

8. Paragraph 47 of the NPPF states:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

The word “deliverable” in that paragraph is explained in a footnote – footnote 11 – which states:

“To be considered deliverable, sites 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 and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that

schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

Footnote 12 explains the word “developable”:

“To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.”

9. The policy in paragraph 47 of the NPPF has on several occasions been considered by the courts (see, for example, *Suffolk Coastal District Council*, in particular in the judgment of Lord Gill at paragraphs 76 to 79; *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610, in particular the judgment of Sir David Keene at paragraphs 23 and 30; and *Solihull Metropolitan Borough Council v Gallagher* [2014] EWCA Civ 1610, in particular the judgment of Laws L.J. at paragraph 16).
10. Paragraph 49 of the NPPF is concerned with development control decision-making. It states:

“49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

The consequences for a local planning authority of its failing or succeeding in this fundamental requirement of national planning policy need no further explanation by the court (see *Suffolk Coastal District Council*, in particular the judgment of Lord Carnwath at paragraph 59, and the judgment of Lord Gill at paragraphs 80 to 85; and *Barwood v East Staffordshire Borough Council*, in particular my judgment at paragraph 22).

11. The Planning Practice Guidance (“the PPG”), first published by the Government in March 2014, in the section dealing with “Housing and economic land availability assessment”, paragraph 3-029-20140306, under the heading “How is deliverability (1-5 years) and developability (6-15 years) determined in relation to housing supply?”, says that “[assessing] the suitability, availability and achievability (including the economic viability of a site) will provide the information as to whether a site can be considered deliverable, developable or not currently developable for housing”. Paragraph 3-031-20140306, under the heading “What constitutes a ‘deliverable site’ in the context of housing policy?”, states:

“Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly

and transparently set out. If there are no significant constraints ... to overcome[,] such as infrastructure[,] sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe.

... .”

Paragraph 3-033-20150327, under the heading “Updating evidence on the supply of specific deliverable sites sufficient to provide five years worth of housing against housing requirements”, was published on 27 March 2015, and was thus extant at the time of the Secretary of State’s decision in this case. It states:

“... .

[The NPPF] requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing. As part of this, local planning authorities should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply.

Local planning authorities should ensure that they carry out their annual assessment in a robust and timely fashion, based on up-to-date and sound evidence, taking into account the anticipated trajectory of housing delivery, and consideration of associated risks, and an assessment of the local delivery record. Such assessment, including the evidence used, should be realistic and made publicly available in an accessible format. ...

... .”

The previous version of that paragraph of the PPG, published on 6 March 2014, stated:

“... .

[The NPPF] requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing. As part of this, the local planning authority should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply. By taking a thorough approach on an annual basis, local planning authorities will be in a strong position to demonstrate a robust five year supply of sites.

... .”

The inspector’s report and the Secretary of State’s decision letter

12. The inspector’s report runs to 171 pages. It contains a comprehensive consideration of St Modwen’s section 78 appeals on their planning merits, recording the parties’ cases on the principal issues to which those appeals gave rise, and reaching conclusions on each.

13. The five “main planning issues”, identified by the inspector in paragraph 13.5 of her report, included these:

“13.5. ...

- (i) the relationship of the proposals to the current and emerging development plan and to national planning policy;
- (ii) the adequacy of the provision for housing in the East Riding of Yorkshire, including for affordable housing, and the contribution which either proposal could make to that supply;
- (iii) the particular contribution made by the appeal site to the supply of employment land and to wider economic development objectives, including the potential of the Humber to become established as a centre for renewable energy;

... .”

14. On the first of those three issues – “the development plan and national planning policy” – the inspector said, in paragraph 13.7, that there was “no dispute that the proposals conflict with the adopted development plan and the emerging local plan”. But she was prepared to give them the benefit of “the presumption in favour of sustainable development” in the NPPF – observing in paragraph 13.10 that that presumption “could ... be engaged by virtue of the fact that some of the relevant policies are out of date”.

15. On the second issue – the “provision of housing in the East Riding of Yorkshire” – the inspector’s conclusions, in paragraphs 13.63 to 13.65, were these:

“13.63. With regard to the five year housing requirement, I consider that the Council’s figure of just over 10,000 for the housing market area is to be preferred, on the basis that it accords most closely with the relevant national policy and offers a reasonably robust, full, objective assessment of need. Use of an HMA-based figure should be understood as part of the first stage of formulating the requirement according to national policy rather than the second stage of applying a constraint on the basis of local policy making. The Secretary of State may conclude that the requirement should be based on the ERYC administrative area, in which case the Council’s figure of just under 14,000 is to be preferred over the Appellant’s figure of 15,300.

13.64. The Appellant’s approach to the assessment of housing land supply is fundamentally flawed so that the Council’s assessment of supply, at almost 15,000, is also to be preferred. Thus, whether the analysis is based on the HMA or the ERYC area, I consider that the Council has demonstrated the existence of a five year housing land supply. Even if the Appellant’s five year housing requirement of 15,300 is taken, the shortfall of 300 would be modest in the context of the overall requirement, making it debatable whether any adverse effect on housing delivery due to supply constraints would be identifiable in practice.

- 13.65. Since it has not been shown that there is any pressing need for additional sites to come forward to sustain the local supply of housing, I consider that the appeal proposals would not deliver additional benefits by virtue of their contribution to that supply. The contribution of the proposals to the supply of affordable housing is a different matter. Here, significant need has been demonstrated and it seems likely that such need will persist. For that reason, substantial weight should attach to the proposals, in proportion to the extra contribution they would make to the supply of affordable housing.”
16. Behind those conclusions lay a much more detailed assessment, some of which I shall need to mention in dealing with the issues before us.
17. As for the third issue – “employment land supply and wider economic development objectives” – the inspector said, in paragraph 13.87, that “[the] appeal site comprises a substantial proportion of the Melton site, one of only four key employment sites in the East Riding and one of only two identified for general industrial uses”, and that “[if] the appeal site was developed for housing, whether along the lines of Appeal A or Appeal B, the status of Melton as a key employment site would be much diminished so that it would have a significant, detrimental effect on the portfolio of employment land”.
18. The inspector set out her “Overall Conclusions” in section 14 of her report. She confirmed that in her view both of the appeal schemes were in conflict with the relevant provisions of the development plan, concluding, in paragraph 14.2, that “[the] proposals run counter to local planning policies in three respects: the use of employment land for housing; the strategy of maintaining a portfolio of employment land; and the location and distribution of residential development”, and that they were “contrary to the existing and the emerging development plan”. She went on to say, in paragraph 14.4, that it was “necessary ... to consider the proposals within the terms of the presumption in favour of sustainable development”. Under the heading “The benefits of the proposals”, in paragraph 14.5, she referred to the two contentions on which St Modwen had relied in asserting an urgent need for housing development: first, “that a significant shortfall exists in the availability of land for housing”; and second “that there is an acute need for affordable housing”. She rejected the first of those two contentions (in paragraph 14.6), but accepted the second (in paragraph 14.7). As to the first, she said this, in paragraph 14.6:
- “14.6. The first ... has not been demonstrated. The Council’s assessment of the position as to the housing requirement and the housing land supply has been shown to be reasonably robust when tested at this inquiry. This would be the case whether the housing requirement was taken as that for the housing market area or the ERYC administrative area. In either case, a five year supply of sites exists. Since the identified supply already satisfies the test of boosting significantly the supply of deliverable sites, the proposals would not deliver any additional benefit in this respect.”

On the likely “adverse impacts” of the proposed development, she concluded, in paragraph 14.10, that “[the] proposals would have a significant, detrimental effect on the portfolio of employment land”, and “would also undermine wider economic development objectives ...”, and, in paragraph 14.16, that “a grant of planning permission for either proposal would strike at the heart of key strategic decisions in the emerging ERYC Local

Plan, thus undermining the plan-making process”, and therefore that “the harm by way of prematurity should carry considerable weight”. As to “[whether] the proposal would represent a sustainable form of development”, she concluded, in paragraph 14.17, that it would not.

19. Finally, in striking “[the] overall planning balance”, the inspector concluded in paragraph 14.20 that “[the] proposals are contrary to the development plan”, that “[when] considered in the context of the presumption in favour of sustainable development contained in NPPF, these adverse effects would significantly and demonstrably outweigh the benefits of each proposal”, and that “[the] material considerations are not sufficient to warrant a decision contrary to the development plan”. Explaining her “Recommendation” in the light of those conclusions, she said in paragraph 14.21 that “[at] the heart of [the] inquiry was the question of whether the best use for the appeal site at this time would be to continue to hold it in reserve for employment development or to bring it forward now for housing”, and that “[on] the evidence provided”, she considered that “the planning case for housing has not been made so that neither appeal should succeed”. In paragraph 14.22 she recommended that both appeals be dismissed.
20. In his decision letter the Secretary of State adopted the inspector’s formulation of the “main issues” in the appeals, and agreed with her principal conclusions upon them. As to “[the] development plan and national planning policy”, he noted in paragraph 10 that there was “no dispute that the proposals conflict with the adopted development plan and the emerging local plan” and he agreed with the inspector “with regard to the weight that this conflict should be given”. He also agreed with the inspector’s conclusion in paragraph 13.10 that, “in accordance with paragraph 49 of the Framework, so long as the appeal proposals can be accepted as a sustainable form of development, the planning balance to be applied would be that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”. On “[the] provision for housing in the East Riding of Yorkshire”, he concluded in paragraph 11:

“11. The Secretary of State has carefully considered the Inspector’s reasoning on housing provision at IR13.11-13.62 and, for the reasons given at IR13.63-13.65, he agrees with her conclusions that the Council’s figures of a requirement for just over 10,000 dwellings for the housing market and just under 14,000 for the Council’s administrative area are to be preferred over those put forward on behalf of your client, as is the Council’s assessment of overall supply, at almost 15,000. Overall, therefore, the Secretary of State agrees with the Inspector that, whether the analysis is based on the Housing Market Area or the Council’s area, it has not been shown that there is any pressing need for additional sites to come forward to sustain the local supply of housing. However, he also agrees with the Inspector’s conclusion that substantial weight should attach to the proposals in proportion to the contribution they would make to the supply of affordable housing.”

And on “[the] employment land supply and wider economic objectives”, he said in paragraph 12 that he agreed with the inspector’s conclusion in paragraph 13.87 of her report that, “as the appeal site comprises a substantial proportion of the highly accessible Melton site, it represents a logical choice in relation to the spatial strategy of the emerging local plan with regard to employment land which would be much diminished if

the appeal site were to be developed for housing – thereby having a significant detrimental effect on the portfolio of employment land”. He therefore also agreed with the inspector that, “although there is potential for other land to come forward, this would have to be on an ad hoc basis rather than as part of a plan-led approach, potentially causing harm to economic development objectives”. In his “Overall Conclusions”, he said in paragraph 18 that “[although] the provision of new homes, including affordable housing, would be an important social and economic benefit, ... granting permission for either of the appeal schemes would be contrary to the development plan, so that it is necessary to consider whether there are material considerations sufficient to warrant a decision contrary to that”. In paragraph 19 he concluded that “[with] regard to Appeal A, ... the benefits of the scheme are significantly and demonstrably outweighed by the adverse impacts including that on the Council’s overall spatial strategy for housing, their economic objectives and the portfolio of employment land, and the urbanising impact on North Ferriby”, and “[in] the case of Appeal B, ... these disbenefits would be compounded by the reduced quantum of housing while the funding for a bridge across the railway line would not be a proportionate or reasonable response to any harm to the supply of employment land”. In paragraph 20 he said he agreed with the inspector’s recommendations, and therefore dismissed both appeals.

Ouseley J.’s judgment

21. In a typically careful judgment, Ouseley J. considered the “Housing land supply” issue in St Modwen’s challenge under five headings, two of which – “Issue (c): the approach to “deliverable” sites” and “Issues (d) and (e): housing record and trajectory” – largely embrace the issues now raised in this appeal.

22. Before getting to those two issues, the judge had come to these conclusions in paragraph 46 of his judgment:

“46. ... [The inspector] addressed the issue of whether ERYC had demonstrated that the sites in its five year housing land supply figures were deliverable within the requirements of [47] NPPF and footnote [11]. Her approach reflects the requirements of [49] NPPF and of the PPG. She had evidence on deliverability sufficient to enable her to reach a reasonable planning judgment.”

There is no criticism of those conclusions in this appeal.

23. On “Issue (c): the approach to “deliverable” sites”, Ouseley J. said in paragraphs 49 to 52 of his judgment:

“49. Mr [Christopher] Young contended that the Inspector had misinterpreted what “deliverable” meant in NPPF [47]. This was more an issue about the language she had used in two paragraphs, IR [13.53 and 13.56], rather than whether any substantive conclusions showed a misinterpretation of the concept. ...

50. [Mr Young] submitted that the inspector had erred in drawing a distinction between the supply of housing and the delivery of housing on it. Delivery was at the heart of the NPPF. The Inspector had focused on “supply” and not on

“deliverable supply”. She needed to find that specific sites were deliverable. The argument itself veered somewhat uncertainly between the concepts of “delivery”, and “deliverability”.

51. In my judgment, the Inspector made no error of interpretation of the NPPF at all. The NPPF and the assessment of housing land supply are concerned with “deliverability”, which is an assessment of the likelihood that housing will be delivered in the five year period on that site. The assessment of housing land supply does not require certainty that the housing sites will actually be developed within that period. The planning process cannot deal in such certainties. The problem of uncertainty is managed by assessing “deliverability” over a five year period, re-assessed as the five year period rolls forward. The Inspector was simply recognising that there is that difference, and her focus had to be on deliverability, which was not disproved by showing that there were uncertainties. All this was very much a matter of degree for her.
52. There are many reasons why the difference may exist: the assumed production rates off large sites may be too high for the market, though that does not seem to have been an issue here; the building industry’s infrastructure, skilled labour, finance, and materials, may not be geared up to the assumed rate; and the market may not wish to build or buy houses at the assumed rate of delivery; mortgage funds may not be available for those who would wish to buy. As Mr [Paul] Tucker [Q.C.] pointed out, the local planning authority can only do so much, that is to maintain a five year supply of deliverable housing land. The market, comprising house builders, finance and purchasers, has to do the rest. I reject this aspect of ground 1; the Inspector made no error of law.”

24. On “Issues (d) and (e): housing record and trajectory”, in paragraphs 53 to 59, the judge said:

- “53. These can be taken together: (d) relates to the way in which the Inspector approached ERYC’s past delivery of housing, and (e) relates to the trajectory it placed before the Inspector, and prepared for the Local Plan examination. They are also bound up with the other contention, featuring passim in Mr Young’s argument, that the decision of the Inspector was not merely overly generous to EYRC, but was irrational.
54. The essence of (d) was that the supply figures, of 15000, over 5 years or 3000 a year was far beyond what ERYC had achieved in the past, which was of the order of 650 a year, and of (e) was that it was far ahead of what EYRC was putting forward as its expected production over the five years. ERYC’s April 2014 Housing Implementation Strategy for submission to the Local Plan examination, in evidence before the Inspector, showed fewer than 1000 dwellings built in 2013-14, and 1500 or fewer in each succeeding year until that figure of 1500 was just exceeded in 2017-18, making a total for the five relevant years of no more than 7000 dwellings.
55. Mr Young described ERYC as in effect saying that there was a realistic prospect that 3000 houses a year would be produced, but that it did not regard that as the likely outcome, the outcome that more probably than not would

occur. No legally adequate reasons had been given as to how its five year housing supply figures could be reconciled with its past and probable future delivery.

...

57. NPPF [47], 4th bullet point, states that local planning authorities should illustrate “the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy ... describing how they will maintain delivery of a five-year supply of housing land to meet their housing target.”
58. Mr Young’s point was not that market factors, such as a spread of locations, and locations where people actually wanted to live, or the delivery rate of large sites had been unlawfully ignored in the assessment of the sites warranting ERYC’s supply figures. Both aspects of this ground went to an argument deployed before the Inspector to the effect that the housing land supply figures put forward by ERYC were not credible, and the Inspector well understood the way the point was being deployed, as her account of St Modwen’s case and Mr Young’s closing submissions to her showed. His was a simple point, but not a principal important issue, on the credibility of EYRC’s judgment; he made it to the Inspector, which she rejected, as she was entitled to do in her planning judgment. This point is cousin to issue (c). It is necessary to be cautious lest a point on a s288 challenge takes a very different shape and emphasis from that which it had before the inspector.
59. The process for allocating sites in the emerging plan and the sites, albeit in brief, were considered by the Inspector and judged to be deliverable. She took account of these issues in reaching that judgment, but she concluded that they did not persuade her that the supply sites were not deliverable. That was a planning judgment for her. The past shortcomings in the supply of land were addressed in the manner required by the NPPF through the 20 percent buffer, though of course that can only address a shortfall caused by failings in the supply of deliverable housing land. The future difference between what was “deliverable” and what would probably be “delivered”, discussed above, lies at the heart of the difference between the housing supply figures and the housing trajectory. This difference did not reflect, on the Inspector’s conclusions, a contradiction between her assessment of what was “deliverable” and what ERYC thought was “deliverable”, nor did it mean that ERYC was saying one thing to one Inspector and something completely different to another. She accepted that ERYC was intending to give great weight to the fact of allocation in the plan when it came to reach its decisions on planning applications for housing on such sites. So far as “deliverability” was concerned, which it was her task to consider, that was the second principal point. Thereafter it would be market factors which would lead to delivery. If sites are deliverable, and the problem in delivery is not within the control of the planning authority, for example the cost of housing or the availability of finance, the solution to a problem of delivery is not an increase in the supply of sites which are capable of delivery. The issue raised was not ignored; it was dealt with briefly but sufficiently.”

Issue (1) – Did the Secretary of State misinterpret or misapply government policy for the supply of housing in paragraph 47 of the NPPF?

25. It is necessary at this stage to look more closely at the inspector’s conclusions on the supply of housing land. In the section of her report where she dealt with “Planning Policy”, she referred in paragraph 4.11 to the policies in paragraphs 47 and 49 of the NPPF, and summarized them, reminding herself of the requirement in paragraph 47 that local planning authorities “should identify a supply of specific, deliverable sites sufficient to provide five years worth of housing against their housing requirements”. She came back to that requirement in paragraph 13.11, where she introduced her conclusions on “Issue 2: provision for housing in the East Riding of Yorkshire”. As she said in that paragraph, “[where] the existence or otherwise of a shortage of land for housing is relevant to an appeal, it is necessary to have regard to NPPF paragraph 47”, which she then paraphrased, and that “[as] part of this process, the LPA must identify sufficient sites to provide five years worth of housing against their housing requirements”.
26. The inspector set out “the respective positions of the parties by the end of the inquiry” in a table in paragraph 13.14 of her report. As she said in a footnote (footnote 146), both the council and St Modwen had followed the policy in paragraph 47 of the NPPF “where there has been a persistent record of under delivery” and had therefore “adopted a common approach of including the 20% buffer as part of the calculation of the housing land requirement”. The council’s position was that the five-year requirement, for its own area, was 13,957, and for the housing market area, 10,053; St Modwen’s, that it was 15,312. The parties’ “final positions” on “Housing land supply” were set out in a table in paragraph 13.41: the council’s position being that there was a “[total] five year supply” figure of 14,971; St Modwen’s, that the figure was 4,734. The “principal area of disagreement”, as the inspector said in paragraph 13.42, “related to allocations in the emerging local plan”, though “[to] a lesser extent, there was also disagreement as to allocations in the existing Local Plan and to larger sites with planning permission”.
27. She went on, in paragraphs 13.43 to 13.55, to deal with those issues. In paragraphs 13.43 to 13.50, under the heading “The approach to allocations in the emerging local plan”, she said:

“13.43. Footnote 11 of NPPF paragraph 47 states that deliverable sites should be available, in a suitable location, achievable and have a realistic prospect of being developed. ... Both the Appellant and the Council draw attention to the Wainhomes judgement [the judgment of Stuart-Smith J. in *Wainhomes (South West) Holdings Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 597 (Admin)]. From this, it appears there are two key points to note with regard to the interpretation of NPPF paragraph 47: firstly, that whether or not a site is deliverable is fact sensitive; and secondly, that inclusion of a site in an emerging local plan is some evidence of deliverability, since it should normally be assumed that an LPA will make a responsible attempt to comply with national planning policy. Nonetheless, there are other relevant factors including the plan’s evidence base, the stage the draft plan has reached and the nature of any objections.

- 13.44. Pointing to the strong emphasis in NPPF on delivery, the Appellant has taken the position that supply will largely consist of sites with planning permission, putting forward a figure of just over 4,700 as the realistic supply. However, if the exercise is to be fact-sensitive as indicated in the Wainhomes judgement, it follows that sites should not be discounted simply on the basis of a general characteristic such as their planning status. Moreover, there is a fundamental lack of credibility in a figure for a period looking five years ahead which fails to acknowledge the likelihood that the Council will grant at least some planning permissions during that period. In this respect, it should be noted that the Appellant's own supply figure has had to be revised upwards by a substantial margin ... in order to reflect this very fact. The Appellant's approach to deliverability does not achieve the intended aim of providing certainty over the projected five year period.
- 13.45. On the question of the status of sites without planning permission, the Appellant draws attention to various appeal decisions, particularly High Peak and Ottery St Mary. ... In contrast, for the two appeals currently under consideration, the Council's case is based on all the sites identified in a submission draft allocations document rather than a small number of strategic sites. The relevant local plan is in the process of being examined and provides a much clearer picture as to technical or viability issues and the nature of any objections. The circumstances are not comparable and a different approach is warranted here, due to the different characteristics of the evidence base and the availability of public responses to the emerging plan. In addition, it seems to me there is a fundamental flaw in an approach to the assessment of housing land supply which fails to entertain the possibility that a Local Planning Authority with an identified need of at least 1400 dwellings a year and an emerging local plan which provides for 23,800 dwellings may grant at least some planning permissions for residential development over a five year period.
- 13.46. On its own, the absence of a planning permission is not sufficient reason for a site to be categorised as undeliverable. On that basis, I consider that very little weight can be attached to the Appellant's figures for supply from the existing and emerging local plans. [7.107; 9.147-8]
- 13.47. The second point raised from the Wainhomes case is that, in a plan-led system, regard needs to be had to the evidence base of the emerging plan, albeit this depends on context. In this instance, the emerging ERYC local plan makes detailed provision for development over the plan period. Whilst the Appellant protests that the detailed evidence base for those allocations was not put to the inquiry, it seems to me that the proper arena to test such detail is indeed the Local Plan examination. For the purposes of this inquiry, it is sufficient to establish the extent to which reliance may be placed on the emerging local plan.
- 13.48. The emerging local plan makes provision for 23,800 additional dwellings over the plan period. The Council contends that some 11,000 should be considered deliverable over the next five years. The Council's evidence to this inquiry on this point comprises the PSAD dated January 2014, the

SHLAA, which sets out the position at November 2013 and the evidence of Mr Hunt [the council's Planning Policy Manager], particularly appendices L and M (as updated by ERYC 14 and ERYC 25).

13.49. Sites in the PSAD have been subjected to a four-stage assessment which includes deliverability. An example of this can be seen in the discussion of potential sites at Melton at Chapter 3 of Mr Hunt's PoE. However, although this methodology may support inclusion of a site within the emerging local plan, it does not demonstrate the likelihood of its delivery in the next five years, as indicated by the Council's own acceptance that some sites should be discounted.

13.50. Turning to the SHLAA, two key assumptions underpin its reliance on emerging local plan allocations in the five year housing land supply figures: that, since few sites require infrastructure to be provided prior to commencement of development, most of the allocations in the emerging local plan can be regarded as being free from significant constraints; and that the Council is committed to affording weight to the emerging local plan when determining planning applications."

28. On the "Supply from the emerging local plan" she noted, in paragraph 13.52, that "the number of sites with planning permission or expected to obtain such permission has risen significantly (by almost 1100 in three months) and the trend for those under consideration is also upward". And in paragraph 13.53 she said this:

"13.53. Clearly, given the number of sites involved, it may well turn out that not all allocations currently identified as deliverable will in fact be delivered. However I consider that, overall, the Appellant has not shown that this part of the evidence base is lacking in robustness. As a result, the Council's figure of 11,156 dwellings on sites identified in the emerging local plan should carry substantial weight. [7.104-107; 9.147-151]" (my emphasis).

In paragraph 7.107, one of the paragraphs in her summary of the council's case on housing land supply, she had said that "the big issue between the parties is the extent to which the draft allocations are included within the figures".

29. As for "Sites in the existing Local Plan", the inspector found in paragraph 13.54 that the council's "assessment that 612 dwellings could be delivered on these sites is reasonable". And under the heading "Lead-in times" she accepted, in paragraph 13.55, that the council's "figure of 1886 dwellings to be delivered on larger sites ... appears to be reasonable".

30. In paragraph 13.56 the inspector turned to "The credibility of the supply figure", and said:

"13.56. Whilst the Council's supply figure has fluctuated over the period of the inquiry, a fair reading of Mr Hunt's first proof shows that the discussion of a 12 year supply took place in the context of the weight which could be attached to sites in the emerging local plan (StM16). In a situation where a Local Plan is under preparation, it is not surprising that data will be subject to

revision. As such, the fluctuations of themselves should not be seen as indicative of a lack of reliability. It is also suggested that the 15,000 figure should be seen as absurd in comparison with the housing trajectory.

However, the assessment of supply is distinct from that for delivery. [7.101-103; 9.142-144]” (my emphasis).

31. Before us, Mr Young repeated the argument on the inspector’s alleged misinterpretation and misapplication of national policy in paragraph 47 of the NPPF rejected by Ouseley J.. The argument was largely based on what the inspector said in the two sentences I have emphasized in paragraphs 13.53 and 13.56 of her report. Mr Young submitted that the judge was wrong to uphold the inspector’s distinction – which the Secretary of State plainly accepted – between “supply” and “delivery”, by interpreting the concept of “a supply of specific deliverable sites sufficient to provide five years worth of housing ...” (in the second bullet point of paragraph 47 of the NPPF) as not involving, inevitably, an assessment of “what would probably be “delivered”” (paragraph 59 of Ouseley J.’s judgment). Ouseley J.’s judgment, said Mr Young, is inconsistent. Although he had recognized (in paragraph 51) that the policy in paragraph 47 of the NPPF is concerned with “an assessment of the likelihood that housing will be delivered in the five year period” on the site in question, he had gone on (in paragraph 59) to conclude, in effect, that there is no need for an assessment of “what would probably be “delivered””. This distinction between deliverability and the probability of delivery was false, and betrayed a misinterpretation of policy in paragraph 47. Properly understood, submitted Mr Young, the policy requires an assessment of what would probably be delivered. It had not been St Modwen’s case at the inquiry, nor was it now, that there had to be certainty of delivery. And, Mr Young confirmed, it was no longer their position that, to be included in the assessment, a site had to have planning permission for housing development.
32. I cannot accept those submissions. In my view it would have been most surprising if the Secretary of State had gone astray in his understanding and application of these fundamental components of national planning policy for the supply of housing, contained as they are in the Government’s primary policy document for the planning system in England, which had been published some three years before he came to make his decisions in this case. Nor is it likely that an experienced inspector would err in that way (see the judgment of Lord Carnwath in *Suffolk Coastal District Council*, at paragraph 25). I think the court should approach arguments like this with great hesitation. Here I am in no doubt that the argument is bad; that neither the inspector nor the Secretary of State misinterpreted or misapplied the relevant concepts and requirements in NPPF policy, or failed to express their conclusions with completeness and clarity; and that the judge was therefore right, essentially for the reasons he gave.
33. It is important to keep in mind – as Ouseley J. said in the second sentence of paragraph 49 of his judgment – that Mr Young’s argument here is really directed at the language used by the inspector in paragraphs 13.53 and 13.56 of her report. It does not attack her substantive conclusions on the deliverability of housing sites. Nor does it cast doubt on her conclusions, fully adopted by the Secretary of State, on the adequacy of the relevant housing supply when measured against the five-year housing requirement – specifically, that “the Council’s figure of just over 10,000 for the housing market area is to be preferred, on the basis that it accords most closely with the relevant national policy and offers a reasonably robust, full, objective assessment of need” (paragraph 13.63 of the inspector’s report); that if the Secretary of State were to conclude that the housing

requirement should be based not on the housing market area, but on the council's administrative area, "... the Council's figure of just under 14,000 is to be preferred over the Appellant's figure of 15,300" (ibid.); that St Modwen's "approach to the assessment of housing land supply is fundamentally flawed so that the Council's assessment of supply, at almost 15,000, is also to be preferred" (paragraph 13.64); that, whether the analysis was based on the housing market area or on the council's administrative area, "the Council has demonstrated the existence of a five year housing land supply" (ibid.); that "[even] if [St Modwen's] five year housing requirement of 15,300 is taken, the shortfall of 300 would be modest in the context of the overall requirement ..." (ibid.); and that it had "not been shown that there [was] any pressing need for additional sites to come forward to sustain the local supply of housing ..." (paragraph 13.65).

34. Those conclusions were as firm an endorsement of the council's case on housing land supply, and as firm a rejection of St Modwen's, as one could imagine. All of them, together with the assessment on which they were based, were expressly supported by the Secretary of State in paragraph 11 of his decision letter. They are not in themselves said to be unlawful. Nor could they be. They are, all of them, perfectly secure as matters of planning judgment, and not in any way vulnerable in proceedings such as these. I therefore agree with the judge's conclusions in paragraph 46 of his judgment, which were crucial, and – as I have said – are not the subject of any criticism before us.
35. That is the context in which this issue in the appeal has to be considered. It lends an air of inconsequence, even unreality, to the argument put forward. But in any case, as was submitted both by Mr Richard Honey for the Secretary of State and by Mr Tucker for the council, the argument itself is mistaken. Its fatal defect lies in its misreading of the policy in paragraph 47 of the NPPF. It misses the essential distinction between the concept of deliverability, in the sense in which it is used in the policy, and the concept of an "expected rate of delivery". These two concepts are not synonymous, or incompatible. Deliverability is not the same thing as delivery. The fact that a particular site is capable of being delivered within five years does not mean that it necessarily will be. For various financial and commercial reasons, the landowner or housebuilder may choose to hold the site back. Local planning authorities do not control the housing market. NPPF policy recognizes that.
36. Where the policies in paragraphs 47 and 49 of the NPPF are concerned with the composition of the five-year supply of housing land, they are consistently worded to refer to a supply of housing sites that can be regarded as "deliverable", not sites that are regarded as certain to be delivered. Thus, in the second bullet point of paragraph 47 the local planning authority's task is to "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements ..." (my emphasis) – with the appropriate buffer (whether 5% or 20%), whereas in the third bullet point, the requirement for subsequent years ("years 6-10 and, where possible, ... years 11-15") is for the identification of specific sites that are "developable", or "broad locations for growth". And in the policy in paragraph 49 the implicit requirement is the same, namely that the authority must be able to "demonstrate a five-year supply of deliverable housing sites" (my emphasis). By contrast, the policy for the "housing trajectory" in the fourth bullet point of paragraph 47 is not expressed in terms either of "deliverable" or of "developable" sites as such, but in terms of illustrating "the expected rate of housing delivery" (my emphasis).

37. That those who drafted the policies in paragraph 47 and 49 of the NPPF intended to refer to “deliverable sites” and “deliverable housing sites” where they did, with a meaning distinct both from that of the expression “developable sites” and also from the idea of an “expected rate of housing delivery”, is confirmed by their having taken the trouble to define the word “deliverable” so precisely in footnote 11, and the word “developable” in footnote 12. Had the Government’s intention been to frame the policy for the five-year supply of housing land in terms of a test more demanding than deliverability, this would have been done.
38. The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be “available now”; second, that they should “offer a suitable location for development now”; third, that they should be “achievable with a realistic prospect that housing will be delivered on the site within five years”; and fourth, that “development of the site is viable” (my emphasis). Each of these considerations goes to a site’s capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to “[sites] with planning permission”. This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words “realistic prospect” in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been “a record of persistent under delivery of housing”. Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a “realistic prospect” – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as “deliverable” it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years. As Lord Gill said in paragraph 78 of his judgment in *Suffolk Coastal District Council*, when referring to the policies in paragraph 47 of the NPPF, the insistence on the provision of “deliverable” sites sufficient to provide five years’ worth of housing reflects the futility of local planning authorities relying on sites with “no realistic prospect of being developed within the five-year period”.
39. One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the “housing trajectory” referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as “a housing trajectory for the plan period” (my emphasis). Likewise, the “housing implementation strategy” referred to in the same bullet point, whose purpose is to describe how the local planning authority “will maintain delivery of a five-year supply of housing land to meet their housing target” is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to “demonstrate a five-year supply of deliverable housing sites”,

not against the requirement that the authority must “illustrate the expected rate of housing delivery through a housing trajectory for the plan period”.

40. We are concerned with the alleged unlawfulness of a development control decision. In the light of a proper understanding of the policies in paragraphs 47 and 49 of the NPPF, in particular those pertaining directly to development control decision-making, was the judge’s approach to that allegation misguided? In my view it plainly was not.
41. When the two sentences on which Mr Young concentrated in paragraphs 13.53 and 13.56 of the inspector’s report are read fairly in their full context, they do not, in my view, reveal any misunderstanding of NPPF policy. The inspector was clearly alive to the distinction between deliverability and actual delivery, and had well in mind that deliverability entailed a “realistic prospect” of the site being delivered. She was entitled to conclude, as a matter of planning judgment, that “given the number of sites involved, it may well turn out that not all allocations currently identified as deliverable will in fact be delivered” (paragraph 13.53), and, again as a matter of planning judgment, that the council’s housing supply figure of 15,000 dwellings was not undermined by its housing trajectory, given that “the assessment of supply is distinct from that for delivery” (paragraph 13.56). Indeed, those conclusions were as much statements of common sense as they were of planning judgment. In coming to them, the inspector did not dilute the test of deliverability provided for in paragraph 47 of the NPPF. It is plain – for example, in paragraphs 13.11 and 13.43 of her report – that she had a sound understanding of the policy in paragraph 47, and that this lay behind her conclusions in paragraphs 13.43 to 13.56, and, in particular, the distinction she drew in paragraphs 13.53 and 13.56 between deliverability and the actuality of delivery. And the reasons she gave for those conclusions, and more generally in her treatment of the housing land supply issue, were adequate and clear.
42. Ouseley J. was, in my view, undoubtedly right to conclude that the inspector and the Secretary of State did not misinterpret or misapply the NPPF policies in play, and that the relevant questions on “deliverability” and “delivery” were tackled lawfully. His grasp of the distinction between those two concepts is obvious both in paragraph 51 and in paragraph 59 of his judgment. There is no inconsistency of the kind complained of by Mr Young, either in those two paragraphs or elsewhere in the judgment. The judge did not suggest that in assessing deliverability a local planning authority should leave entirely to one side any difficulties beyond their control. But as he said in paragraph 51, “the assessment of housing land supply” is concerned with “deliverability”, and “does not require certainty that the housing sites will actually be developed within [the five-year] period”, and that, as the inspector recognized, “deliverability ... was not disproved by showing that there were uncertainties”.
43. The judge was not drawn beyond the court’s proper role in reviewing a planning decision. What he said in paragraph 59 of his judgment was correct – that the evaluation of housing land supply involved the exercise of “planning judgment”, having regard to the allocation of sites for housing development in the emerging local plan; that the “... difference between what was “deliverable” and what would probably be “delivered” ... lies at the heart of the difference between the housing supply figures and the housing trajectory”; that this difference “did not reflect, on the Inspector’s conclusions, a contradiction between her assessment of what was “deliverable” and what [the council] thought was “deliverable” ...”; that where “deliverability” was concerned, the inspector

had “accepted that [the council] was intending to give great weight to the fact of allocation in the plan when it came to reach its decisions on planning applications for housing on such sites”; that where “delivery” was concerned, she recognized that “market factors”, which were not in the council’s control, would play their part; and that “the solution to a problem of delivery is not an increase in the supply of sites which are capable of delivery”.

44. In my view therefore, the appeal cannot succeed on grounds 5 and 6.

Did the Secretary of State misdirect himself on the council’s housing trajectory?

45. Mr Young submitted that the inspector, and in turn the Secretary of State, failed to take into account the council’s housing trajectory in Figure 1 of its “East Riding Proposed Submission Local Plan – Housing Implementation Strategy (2012-2029)” of April 2014 as compelling evidence of its inability to demonstrate the requisite five-year supply of deliverable housing sites. That evidence had generated an important issue in the appeals, which the inspector should have addressed, in clear and adequate reasons. The judge was wrong to describe it as “not a principal important issue”. It was undeniably an important issue in a case such as this. The housing trajectory, said Mr Young, is “the beating heart” of the policies in paragraph 47 of the NPPF. Here, he submitted, it was “the most critical piece of evidence” on housing land supply. Yet the inspector seems to have ignored it, failing to see its true significance and avoiding the “dichotomy of figures” presented to her by the council. The only possibly relevant reasons are in the final sentence of paragraph 13.56 of her report, where she said that “the assessment of supply is distinct from that of delivery”. That paragraph seemed to be dealing with a different matter – the fluctuations in the council’s housing supply figures, rather than with the housing trajectory itself. Even so, submitted Mr Young, its final sentence revealed a misunderstanding of NPPF policy for the preparation of a housing trajectory; it did not provide the “intelligible and ... adequate” reasons required on a “principal important controversial [issue]” – as Lord Brown put it in *South Bucks District Council v Porter* (at p.1964D); and the absence of proper reasons indicates a failure to have regard to a material consideration.

46. I am unable to accept that argument. It is, in part, a reprise of the submissions I have already rejected on the previous issue. I am not going to repeat what I have already said, except that in my view the inspector’s and Secretary of State’s interpretation and application of government policy in paragraphs 47 and 49 of the NPPF, including the policy on the preparation of a “housing trajectory” in the fourth bullet point of paragraph 47, were legally impeccable. But there are four short conclusions to add.

47. First, it is wrong to describe the council’s housing trajectory as having been, in itself, a “principal important controversial [issue]”. Evidence was given about it at the inquiry, certainly, and submissions were made in closing. But it was only one feature of the case put before the inspector on housing land supply. She had regard to it as a material consideration, which bore on the question of whether the council’s figures for housing land supply were credible. Ouseley J.’s conclusions to this effect in paragraph 58 of his judgment are correct. In these proceedings before the court the importance of the housing trajectory has been elevated to a significance it simply did not have in evidence and submissions at the inquiry. This was not conceded, but it seems quite plain. And I agree

with the judge’s comment that one must “be cautious lest a point on a [section] 288 challenge takes a very different shape and emphasis from that which it had before the inspector”. That is what has happened here.

48. Secondly, the inspector understood what St Modwen were saying about the housing trajectory, which was that it served to demonstrate a lack of credibility in the council’s case on housing land supply. Mr Justin Gartland of Nathaniel Lichfield & Partners, who gave planning evidence on behalf of St Modwen at the inquiry, had described the use of the housing trajectory as a “reality check” (as he confirms in paragraph 95 of his witness statement of 14 August 2015). The inspector knew what was being suggested. The relevant submission made by Mr Young at the end of the inquiry appeared in a single paragraph – paragraph 295 – of a lengthy closing speech, 377 paragraphs in all. It came shortly after another submission on “credibility”, in paragraph 291(vi) – that “the Council’s supply figure has fluctuated to such an alarming degree that it ... lacks any credibility”. It acknowledged the role of the housing trajectory in the council’s plan-making process. It was, as Mr Young said, contained in the council’s “Housing Implementation Strategy (ERYC 32) published as part of the LP evidence base” – which confirms, in paragraph 2.10, that “[the] housing trajectory in figure 1 ... shows how the Council plans to manage the delivery of housing over the plan period”.
49. In paragraph 9.144 of her report, when summarizing St Modwen’s case on housing land supply, the inspector recorded what Mr Young had submitted:

“9.144. Another major problem with the credibility of the Council’s own housing supply figures is the trajectory in the Housing Implementation Strategy, which shows delivery in 2013-2014 at less than 1,000 units (and closer to 800), followed by less than 1,400 for the following two years. The figure is 1,500 for 2016-17 and marginally higher than that in 2017-2018. That is a supply of about 6,500 to 7,000 in the next 5 years on the basis of its own evidence to the Local Plan examination.”

This was a true reflection of the way in which the point had been put to her, in support of the argument that the council’s position on housing land supply lacked credibility and should not be accepted, and with emphasis on the supply figure of a maximum of 7,000. In fact, it was almost an exact quotation of the submission made by Mr Young in paragraph 295 of his closing speech.

50. The inspector went on to record St Modwen’s main argument on housing land supply, which included these points: that St Modwen had “examined the Council’s delivery on the basis of just sites with planning permission and no discounting and projecting forward past delivery” (paragraph 9.146 of her report); that “[the] supply of housing should be assessed on what is available now and that will largely be sites with planning permission” (paragraph 9.147); that “... it is inappropriate to include sites without planning permission or even a resolution to grant unless there is very clear evidence supporting the delivery of that site in the next 5 years” (paragraph 9.148); that “[St Modwen] has elected not to accept any of the sites without planning permission or a resolution to grant” (paragraph 9.149); that “[St Modwen] believes that the Council’s supply of housing land is around 5,000 dwellings”, that this was “woefully inadequate”, and that it was “clear that the Council has nothing like a five year supply of housing land” (paragraph 9.154). That was the gist of St Modwen’s case on housing land supply,

which the inspector – and the Secretary of State – rejected. No complaint is or could be made about the inspector’s recording of it, nor can it be said that she failed to understand it or failed to address it.

51. Thirdly, it is not open to St Modwen now to go behind the inspector’s conclusions on the credibility and reliability of the parties’ respective cases on housing land supply, which she reached in the light of all the relevant evidence, including the council’s housing trajectory. Such conclusions are well within the exclusive province of planning judgment (see, for example, my judgment in *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33, and the first instance judgments of Stuart-Smith J. in *Wainhomes*, at paragraphs 35 and 54, and Dove J. in *Eastleigh Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 4225 (Admin), at paragraphs 13 and 15). For the court to venture there would be to trespass beyond its jurisdiction in the review of planning decisions (see paragraphs 6 and 7 above).
52. Fourthly, it is pointless to rehearse the evidence and submissions presented to the inspector on the council’s housing trajectory in an attempt to persuade the court that her conclusions on housing land supply, shared by the Secretary of State, are somehow legally flawed. They are not legally flawed. On a fair reading, they are all well within the range of lawful planning judgment. As Ouseley J. accepted, the discussion of the parties’ evidence and submissions, in paragraphs 13.41 to 13.56 of the inspector’s report, and her conclusions in paragraphs 13.63 to 13.65, are unassailable. Her conclusions are comprehensive and cogent, and are expressed in clear and adequate reasons. And they are not undone by a failure to take into account, as a material consideration, the council’s housing trajectory, or by irrationality in the weight given to it.
53. As to the approach to sites allocated in the emerging local plan – a matter at the heart of the parties’ dispute on the existence or not of a five-year supply of housing land – the inspector’s conclusions in paragraphs 13.43 to 13.53 of her report, including her conclusion in paragraph 13.53 that “it may well turn out that not all allocations currently identified as deliverable will in fact be delivered”, are faithful to the relevant policy in paragraph 47 of the NPPF, and, in law, unimpeachable. Her focus on the crucial question of deliverability, and her application of NPPF policy on that question, cannot be faulted.
54. Having set out those conclusions, the inspector went on in paragraph 13.56 to consider the credibility of the housing supply figures presented on either side. She referred at the end of that paragraph to her summary of St Modwen’s case in paragraphs 9.142 to 9.144. As her conclusions show, she did not accept that the council’s housing trajectory disproved its case on supply. This was a planning judgment she could properly make on the evidence and submissions before her. In making it, she demonstrably had regard to the housing trajectory as a material consideration; she referred to it directly. And she gave it the weight she judged to be right in view of its status and role.
55. Her relevant reasons, read as a piece, are an ample explanation of her conclusions. Individual sentences in them should not be separated from their full context. In terms that were crystal-clear, she disposed of the argument that the council’s housing supply figure lacked credibility – or “reliability”. She distinctly preferred the council’s case to St Modwen’s, finding herself able to conclude, in paragraph 13.64, that the council had “demonstrated the existence of a five year housing land supply”.

56. That, in the end, was how she resolved the question of credibility, which required her to decide, on all the evidence and submissions she had heard on housing land supply, which side's case she was able to believe. The relevant planning judgment, which the Secretary of State accepted, fell very clearly in favour of the case put forward by the council. It cannot be disturbed in a legal challenge.
57. I conclude, therefore, that Ouseley J.'s conclusions on this part of St Modwen's challenge are valid, and that these four grounds of St Modwen's appeal – grounds 1 to 4 – must also fail.

Did the Secretary of State err in his conclusions on the council's record of housing delivery?

58. Mr Young's argument on this issue – the issue in ground 7 – began with the submission that Ouseley J. should not have thought that the inspector's failure to confront the council's "past shortcomings in the supply of land" could be overcome by the application of the 20% buffer. The inspector had not explained how in her view the council's claimed five-year supply of 15,000 dwellings could be squared with its "local delivery record" of 1,000 dwellings a year, and even less than that in the five years preceding the inquiry. Here again there was a failure to have regard to a material consideration. The council's "local delivery record" was, said Mr Young, "absolutely central" in St Modwen's case on housing land supply. But the inspector did not grapple with it. Before us, however, Mr Young concentrated on a different theme, not pursued before Ouseley J. – that neither the inspector nor the Secretary of State had dealt with the now current guidance in the PPG under the heading "Updating evidence on the supply of specific deliverable site sufficient to provide five years worth of housing against housing requirements". This revised passage in the PPG had been published after the inquiry, and after the inspector submitted her report to the Secretary of State, but before he issued his decision. In the circumstances, Mr Young submitted, the Secretary of State ought to have dealt with it.
59. These arguments I also reject, for reasons similar to those I have given in discussing the previous two issues.
60. Here again one must take a fair-minded approach to the inspector's conclusions. The judge plainly did that in paragraphs 53 to 59 of his judgment. As he recognized, the evidence on the council's record of housing delivery, like the evidence on its housing trajectory, went to the credibility and reliability of its figures for housing land supply. And, as he found, that question was sufficiently and lawfully addressed by the inspector in paragraphs 13.41 to 13.56 and 13.63 to 13.65 of her report, and the reasons she gave were legally good. I agree with him.
61. As Mr Honey submitted, the council's housing trajectory looked forward in time, its housing record back. But the question of the deliverability of housing sites, the essential question for the inspector in considering the parties' cases on the five-year supply of housing land, required her to exercise her planning judgment. This had now to be done in the light of the emerging local plan, with its new policies for housing development and its new allocations of land for such development. In doing it, the inspector did not ignore the council's housing record. She had regard to it, though – correctly – not as a "principal

important controversial issue”. Her summary of St Modwen’s case – in particular in paragraphs 9.142 to 9.144 of her report, to which she referred in paragraph 13.56, included these points: that the council’s claim to have a five-year housing supply of in excess of 15,000 dwellings was “utterly implausible on the available evidence” (paragraph 9.142), since this represented “a supply of over 3,000 houses a year” and “[the] Council’s past track record shows it has never delivered houses in that quantity” (paragraph 9.142(i)); that “the available evidence from [Mr Hunt] is that completions up until April 2014 are still below the [regional strategy] requirement of 1,150 ...” (paragraph 9.142(ii)); that against a requirement of 3,500 completions a year, “the Council has delivered an average of just 635 a year over the last 5 years” (paragraph 9.142(iii)); that for the years between 2004 and 2008 there had been “an annual delivery rate of 1,495 ...” (paragraph 9.142(iv)); that the “annual delivery rate” for the period 2004 to 2013 was “1,017” (paragraph 9.142(v)); and that the council “accepts the record of persistent under delivery ...” (paragraph 9.143). She had these points in mind when she reached her conclusions in paragraph 13.56, and in paragraph 13.64. Plainly, they did not dissuade her from the view that the council had, as she said in paragraph 13.64, “demonstrated the existence of a five year housing land supply”. This was her ultimate planning judgment on the housing land supply issue. I see no reason for the court to interfere with it.

62. I do not accept that, in paragraph 59 of his judgment, Ouseley J. acquitted the inspector of error in dealing with the council’s record of housing delivery merely on the basis of the 20% buffer required in cases where there has been “a record of persistent under delivery ...”. That notion is misconceived. To see why the judge found against St Modwen on this issue one must read the whole of his conclusions in paragraphs 53 to 59 of his judgment. His reference to the 20% buffer in paragraph 59 was entirely legitimate. What he said was that “[the] past shortcomings in the supply of land were addressed in the manner required by the NPPF through the 20 percent buffer ...”. He was right. As Mr Honey submitted, the 20% buffer is “a mechanism to address historic under delivery”, its purpose being “to provide a realistic prospect of achieving the planned supply ...”. With this in mind, the judge was merely acknowledging, correctly, that the council had accepted the need for a 20% buffer to be applied in this case. This concession is referred to in paragraph 7.103 in the inspector’s summary of the council’s case on housing land supply – one of the paragraphs mentioned at the end of paragraph 13.56 – where she had recorded the council’s “acceptance of a 20% buffer”. It is also acknowledged in paragraph 13.14, where she set out the parties’ respective positions on the housing land requirement, confirming in a footnote their “common approach of including the 20% buffer ...”. In my view therefore, Mr Young’s submission here does not begin to prove any error of law.

63. Lastly, the argument that the Secretary of State failed to apply the revised guidance in the PPG affords no basis for quashing his decision. The revised guidance refers to a local planning authority’s “local delivery record”, but the thrust of it, at least for a development control decision, is not materially different from the previous guidance. And it cannot be said that the inspector’s conclusions on the issue of housing land supply, or the Secretary of State’s, could conceivably have been different if the new guidance had been explicitly taken into account. Those conclusions, as I have said, were lawfully reached in the light of the council’s housing trajectory and “local delivery record”. There is, in my view, nothing in this point at all.

Conclusion

64. For the reasons I have given I would dismiss this appeal.

Lord Justice McCombe

65. I agree.

Lord Justice Jackson

66. I also agree.