



Department for Communities and Local Government

Andrew Rose
Spawforths Planning & Urban Regeneration Ltd
Junction 41 Business Court
East Ardsley
Leeds
WF3 2AB

Our Ref: APP/N4720/A/13/2208551

8 June 2016

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL BY MILLER HOMES LAND AT GROVE ROAD, BOSTON SPA

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC, who held an inquiry from 2-23 May 2014 and 6 June 2014, and closed in writing on 11 July 2014, into your client's appeal against the decision of Leeds City Council (the Council) to refuse outline planning permission for a residential development of up to 104 dwellings including associated car parking and garages, means of access and parking facilities for Martin House Hospice, in accordance with application ref: 13/03202/OT/NE.
2. The appeal was recovered for determination by the Secretary of State by letter dated 5 December 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, on the grounds that the appeal involves proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising after the close of the inquiry

4. Following receipt of the IR the Secretary of State wrote to the main parties to clarify the position in relation to the Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended, concerning limitations on the use of planning obligations in the determination of planning applications and appeals. A reply was received from the Council on 16 July 2015, followed by a deed of variation dated 10 September 2015.

5. In November 2015 the Secretary of State sought your views and those of the Council on the latest housing supply figures following the publication of the live table on net supply of housing updated on 12 November 2015. Submissions were received from you on 14 & 21 December 2015 and 22 January 2016, and from the Council dated 14 & 21 December 2015 and 15 January 2016 as listed in the table at Annex A to this letter. The Secretary of State has carefully considered all this correspondence, and has concluded that he now has sufficient information to proceed to a decision. Copies of this correspondence may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan comprises the Leeds Core Strategy (CS), adopted 12 November 2014; and the saved policies of the Leeds Unitary Development Plan Review (UDPR) adopted in July 2006. The Secretary of State agrees with the Inspector that the most relevant policies are those referred to at IR13-14. The Secretary of State also gives limited weight as material considerations to the supplementary planning guidance/documents outlined by the Inspector at IR15.
7. The Inspector refers at IR25 to the emerging Leeds Site Allocations Plan (SAP), and the Council placed considerable dependence on their Publication Draft in their responses referred to in paragraph 5 above. The appeal site is not currently allocated for housing in that plan, but is identified as having potential for future housing development. However, given the significant amount of outstanding objection, the Council currently estimate that they will not be in a position to submit their SAP to the Secretary of State before Spring 2017 with a view to adoption the following winter, by which time it is likely to be subject to significant modification. The Secretary of State therefore gives it limited weight in considering this appeal.
8. The Secretary of State has also had regard to the Draft Clifford Neighbourhood Plan, which has been submitted to the Council for examination. This conforms with saved UDPR policy N34 by treating the appeal site as a Protected Area of Search (PAS). However, as this Plan is still at a relatively early stage, the Secretary of State gives it limited weight.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and associated planning practice guidance; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Main issues

10. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out by the Inspector at IR34.

Development Plan policy

11. The Secretary of State has carefully considered the Development Plan position as set out by the Inspector at IR207-209, along with the updated position as elicited from the reference back exercise referred to at paragraph 5 above. This has led him to agree with the Inspector that, for the reasons given at IR209, whilst policy N34 of the UDPR still has to be taken into account as part of the development plan, the fact that the

Council introduced the Interim Policy to resolve the inadequacy in housing land supply demonstrates that, even though the Interim Policy has subsequently been withdrawn, policy N34 is not up-of-date. Hence, he also agrees with the Inspector that the fact that policy N34 is not up-to-date has implications in terms of the application of paragraph 14 of the Framework (IR212-213), making more apparent the need for a five year housing land supply to feed into the development plan as it evolves.

12. The Secretary of State also agrees with the Inspector (IR210) that the importance of a five-year housing land supply adds significance to the issue of prematurity pending the adoption of the SAP. However, while acknowledging that allowing new housing on sites not allocated for such use could potentially have implications for establishing site allocations but having regard to the ever-increasing amount of time which is elapsing before the SAP is adopted, the Secretary of State agrees with the Inspector that the appeal scheme is not so substantial, nor its cumulative impact so significant, that granting permission would undermine the plan-making process in terms of the scale, location or phasing of housing in the emerging SAP.

The Housing Requirement

13. The Secretary of State is content that the main parties agreed at the appeal inquiry that, across the local authority area as a whole, the housing requirement of 70,000 dwellings between 2012-2028 established in the CS should be taken as the correct figure on which to base housing requirements for the purposes of this appeal; with an annual requirement of 3,660 in the first five years, stepping up to 4,700 from 2017/18 onward (IR211 and 216). Nevertheless, as had already become apparent at the time of the inquiry (IR217), and was reinforced by the information provided during the reference-back exercise referred to at paragraph 5 above, there is already a shortfall of delivery (ie undersupply) against the housing requirement even at the reduced stepped rate.
14. For the reasons given at IR217-219, the Secretary of State agrees with the Inspector that it is reasonable to expect the Council to accommodate the undersupply within the next five years. However, the Secretary of State notes that the Inspector identified the extent of the backlog for 2012-2014, as agreed by parties, to be some 2,363 dwellings (IR220) and, having considered the further evidence received in response to the reference back exercise referred to at paragraph 5 above, he concludes that there has been a continued shortfall of delivery against the CS target creating a cumulative backlog to be added to the five year housing land supply requirement.

The Housing Supply Buffer

15. The Secretary of State has considered the Inspector's reasoning at IR 221-234 on whether a 5% or 20% buffer should be applied to the five year housing requirement figures and, while recognising that the figures prior to the current plan period are not robust and, in particular, the figures proffered from the former Regional Spatial Strategy cannot be given any weight; the Secretary of State agrees with the Inspector's findings overall that a 20% buffer would be appropriate in the light of a persistent under delivery of housing. And, even if that were not the case, the Secretary of State takes the view on the basis of the evidence available to him that, in the light of the increasing requirement and backlog, even applying the lower figure as a buffer indicates that the Council is unable to demonstrate a deliverable 5 year supply of housing land.

Five Year Housing Land Supply

16. Taking account of the Inspector's assessment at IR235-261, along with the further evidence submitted in the reference-back exercise referred to at paragraph 5 above, the Secretary of State agrees with the Inspector that the Council's land supply figures would seem to be overly optimistic; and he is not satisfied that the housing supply sites put forward by the Council are all available, viable or achievable with a realistic prospect that the amount of housing required by the CS will be delivered within 5 years. Hence, the Secretary of State agrees with the Inspector (IR260) that, as there is not a deliverable five year housing land supply, in accordance with the Framework the relevant policies for the supply of housing should not be considered up-to-date and planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits.

Suitability/sustainability of the site

17. The Secretary of State has given careful consideration to the Inspector's conclusions on the suitability and sustainability of the site at IR262-267. Despite having been designated as Green Belt in the past, he agrees that the allocation as a PAS site in the UDPF recognises that, although it was not to be developed during the period covered by that Plan, the site is not considered to be unsuitable for development (IR262). For the reasons given at IR263-267, the Secretary of State also agrees with the Inspector that the proposed development would be a sustainable development, as set out in the terms of the Framework, which would widen the choice of high quality homes in an area where they are required.

Prematurity

18. The Secretary of State agrees with the Inspector (IR268) that, despite the admirable local interest in the development of Neighbourhood Plans for both Boston Spa and Clifford Parish, as neither of these plans has yet been subject to examination, they are at such an early stage that only limited weight can be assigned to them. Furthermore, as already considered in paragraph 12 above, the Secretary of State agrees with the Inspector (IR269) that the development proposed in this case is neither so substantial, nor its cumulative impact so significant, that granting planning permission would undermine the plan-making process for the scale, location or phasing of housing in the emerging SAP. Overall, therefore, having regard to paragraph 216 of the Framework, as the SAP and the Neighbourhood Plans are all still in preparation, and so are subject to unresolved objections and liable to change, the Secretary of State attributes limited weight to them.

Other matters

19. Turning to concerns about highway issues, the Secretary of State agrees with the Inspector (IR271-273) that there is no substantiated evidence on which to base a conclusion that significant changes in traffic levels or highway safety would arise as a result of the proposed development.
20. Like the Inspector, the Secretary of State is satisfied that a full scheme could be developed which would preserve the setting of the Boston Spa Conservation Area and it would not result in harm to the remaining trees protected by a Tree Preservation Order (IR274).
21. The Secretary of State has carefully considered the Inspector's comments at IR275 about the interrelationship between the appeal development and the neighbouring

Hospice, along with the evidence put to the Inquiry and the terms of the relevant obligations in the Unilateral Undertaking and, like the Inspector, he sees no basis for withholding planning permission on the basis of the interrelationship between the two uses.

Conditions

22. The Secretary of State has considered the suggested conditions set out at Annex A to the IR and the Inspector's comments on them at IR276-283. He agrees with the Inspector that those conditions - which are now set out at Annex B to this letter - are reasonable and necessary and meet the tests of the Framework and the guidance.

Obligations

23. The Secretary of State has considered the Inspector's comments at IR284-285 in respect of the obligations pursuant to s106 of the Town and Country Planning Act 1990 submitted in a signed Unilateral Undertaking dated 21 May 2014. Further to this, he has considered the response from the Council stating that following the adoption of a CIL charging schedule contributions toward education, off-site public open space and public transport should be removed and that this was done by way of a Deed of Variation dated 10 September 2015 (see paragraph 4 above).

24. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertaking, as amended by the Deed of Variation and finds that their provisions accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.

Overall Conclusions

25. The Secretary of State concludes that granting permission for the appeal scheme would be contrary to the development plan overall, particularly with regard to conflict with saved policy N34 of the UDPR which designates the site as a Protected Area of Search. He has therefore gone on to consider whether there are any material considerations that indicate the proposal should be determined other than in accordance with the development plan.

26. As he has not found evidence of a five year supply of deliverable housing sites across the local authority area, the Secretary of State concludes that the relevant development plan policies for the supply of housing are out-of-date. Therefore, in line with the presumption in favour of sustainable development at paragraph 14 of the Framework, he considers that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

27. Having carefully assessed the evidence before him, the Secretary of State is satisfied that there are no adverse impacts which, either individually or together, are of sufficient weight to indicate that the development of the appeal site should be restricted. Overall, therefore, the Secretary of State finds that, when taking the policies of the Development Plan and the Framework as a whole, the adverse impacts of granting the proposed development are limited and that there are no material harms that significantly and demonstrably outweigh the very real benefits of providing new homes to boost the supply of housing as required by the Framework.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeal and grants outline planning permission for the erection of up to 104 dwellings including associated car parking and garages, means of access and parking facilities for Martin House Hospice at land at Grove Road, Boston Spa, in accordance with application ref: 13/03202/OT/NE, subject to the imposition of the conditions set out at Annex B to this letter.
29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
32. A copy of this letter has been sent to Leeds City Council. Notification has also been sent to all other parties who asked to be informed.

Yours faithfully,

Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A:

Correspondence received following reference back exercise, Nov 2015

16 July 2015	A Ward Leeds City Council
10 September 2015	C McKay, Leeds City Council (s106)
14 December 2015	A Ward, Leeds City Council
14 December 2015	A Rose, Spawforths
21 December 2015	A Rose, Spawforths
15 January 2016	A Ward, Leeds City Council
22 January 2016	A Rose, Spawforths

Planning Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (February 2013); Site Layout (with redline) BS/Plan/out rev B; Site Layout (without redline) rev B; Proposed Site Access.
- 4) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 5) No development shall commence until details of the off-site highway works (which comprise the details of the improved pedestrian crossing facilities on Grove Road) have been submitted to and approved in writing by the local planning authority. The approved off-site works shall be implemented prior to the first occupation of the development and retained thereafter.
- 6) The access hereby approved shall not be brought into use until works have been undertaken to provide the visibility splays shown on the approved plan Ref: BS/Plan/out Rev B. These sight-lines shall be retained thereafter clear of any obstruction to visibility greater than 1.05m in height above the adjoining carriageway.
- 7) The development shall not be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The plan shall comprise measures to encourage alternative modes of transport for residents and their visitors other than single occupancy of vehicles, including timescales for when those measures shall be put into place and procedures for monitoring the uptake of alternative modes of travel and providing evidence of compliance. The Travel Plan shall be fully implemented and operated in accordance with the agreed timescales.
- 8) No dwelling shall be occupied until the areas shown on the approved plans to be used by vehicles to access that dwelling's plot have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.
- 9) Development shall not commence until full details of surface water drainage including provision of retention basins/tanks/oversized pipes have been submitted to and approved in writing by the local planning authority. The details shall include location, design, materials, levels, proposals for any off-site watercourse work, balancing of flows to greenfield rates of run-off and details of maintenance of the sustainable drainage systems. The scheme shall be implemented in accordance with the approved details prior to occupation of any part of the development, or to a timetable to be agreed in writing with the local planning authority.

- 10) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment Ref: 425/56 dated December 2012. The mitigation measures shall be fully implemented prior to occupation of any dwelling and in accordance with timing/phasing arrangements set out, or in accordance with a phasing/timing programme to be agreed in writing with the local planning authority prior to the commencement of development.
- 11) No development shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works, have been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the details hereby approved.
- 12) No development shall take place until a programme of archaeological recording has been secured. This recording shall be carried out in accordance with a written scheme of investigation that includes the qualifications and suitability of the person undertaking the archaeological works and timing of such works, which has been submitted to and approved in writing by the local planning authority. The archaeological recording shall be undertaken in accordance with the approved scheme.
- 13) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - viii) routes of construction traffic.
- 14) Construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 hours to 1600 hours on Saturdays nor at any time on Sundays or Public Holidays.
- 15) No development shall take place until a plan has been submitted to and approved in writing by the local planning authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details and a timetable to be agreed in writing with the local planning authority prior to the occupation of any dwelling on the site.
- 16) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its

permitted use. The landscape management plan shall be carried out as approved.

- 17) No site clearance, preparatory work or development shall take place until a scheme has been drawn up that identifies the trees to be retained on the site (the retained trees), the measures to be taken for their protection (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS5837 *Trees in Relation to Construction-Recommendations* and submitted to and approved in writing by the local planning authority. The retained trees shall be protected in accordance with the approved details. Both the tree protection plan and the arboricultural method statement shall be accompanied by appropriate drawings showing details of changes in level, foundations and paving, boundary treatment, utilities routes and proposed landscaping operations, in so far as they may affect the retained trees.
- 18) No retained tree shall be cut down, uprooted or destroyed, or have roots or branches pruned, cut or damaged in any manner within five years from the date of occupation of the last dwelling, or other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
- 19) All tree work shall be carried out in accordance with British Standard BS3998 *Recommendations for Tree Work* unless otherwise agreed in writing with the local planning authority.
- 20) If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place as soon as reasonably possible and no later than the first available planting season, unless the local planning authority gives its written approval to any variation.
- 21) Prior to the commencement of development, a scheme shall be submitted to and approved in writing by the local planning authority of bat roosting and bird nesting opportunities (for species such as House Sparrow, Starling, Swift, Swallow and House Martin) to be provided within buildings and elsewhere on-site. The agreed scheme shall show the number, specification of the bird nesting and bat roosting features and where they will be located. The scheme shall thereafter be implemented before the development is brought into use and retained for the lifetime of the development.



Report to the Secretary of State for Communities and Local Government

by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 3 July 2015

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MILLER HOMES

REGARDING AN OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 104 DWELLINGS INCLUDING ASSOCIATED CAR PARKING AND GARAGES, MEANS OF ACCESS AND PARKING FACILITIES FOR MARTIN HOUSE HOSPICE. MATTERS RELATING TO LAYOUT, APPEARANCE, SCALE AND LANDSCPING ARE RESERVED FOR APPROVAL LATER

AT

LAND AT GROVE ROAD, BOSTON SPA

Inquiry held on 2-23 May 2014 and 6 June 2014
Site visit made on 5 June 2014
Land at Grove Road, Boston Spa

File Ref: APP/N4720/A/13/2208551

File Ref: APP/N4720/A/13/2208551

Land at Grove Road, Boston Spa

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Miller Homes against Leeds City Council.
- The application Ref: 13/03202/OT/NE, is dated 8 July 2013.
- The development proposed is described as an outline planning application for the erection of up to 104 dwellings including associated car parking and garages, means of access and parking facilities for Martin House Hospice. Matters relating to layout, appearance, scale and landscaping are reserved for approval later.
- The application was directed for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 5 December 2014.

Summary of Recommendation: The appeal be allowed.

Preliminary Matters

1. Although closing submissions were heard on the 6 June 2014, this was in full knowledge that the Inquiry could not be formally closed due to strong indications from the Core Strategy Inspector that modifications would be made to the Core Strategy (CS) in respect of matters that go to the heart of one of the key issues for the appeal, namely housing land supply requirements. As a consequence, a timetable was established for initial written submissions which were subsequently made, along with further agreed written exchanges. The Inquiry was closed in writing on 11 July 2014¹. However, the Leeds Core Strategy Inspector's Report was published on 5 September 2015 and made further changes to the housing land supply requirements. As a consequence, provision for a further set of written evidence was made. The Core Strategy was adopted on 12 November 2014 and the main parties were given the opportunity to comment on this matter.
2. The decision to recover the appeal for the determination of the Secretary of State therefore took place after the Inquiry was held.
3. The 2012-based household projections for England 2012-2037 were released on 27 February 2015. The parties were given an opportunity to comment upon those figures and the implications for this appeal. As a consequence further comments were received advising, and then confirming, that Leeds City Council has withdrawn one of its policies referred to in its decision to refuse planning permission. Further comments were also supplied regarding changes in housing land. These matters are addressed in this decision.

Putative Reasons for Refusal

4. The appeal was made on the basis of non-determination. At that stage the Council identified two putative reasons for refusal. The second of these related to the fact that an Agreement under s.106 of the Town and Country Planning Act 1990 (as amended) had not be submitted and so matters relating to certain

¹ By e-mail

provisions had not been made. However, a s.106 Agreement was subsequently made addressing those concerns.

5. As such the remaining putative reason for refusal, and key difference between the main parties, is that "*the Local Planning Authority considers that the release of the Grove Road PAS site for housing development would be premature being contrary to Policy N34 of the adopted Leeds Unitary Development Plan Review (2006) and contrary to paragraph 85 bullet point 4 of the National Planning Policy Framework the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging Site Allocations Local Plan and neighbourhood plan. The location of the site means that the site does not fulfil the exceptional criteria set out in the interim housing delivery policy approved by Leeds City Council's Executive Board 13/3/13 to justify early release ahead of the comprehensive assessment of safeguarded land being undertaken in the Site Allocations Plan*".

The Site and Surroundings²

6. The site measures 3.9 hectares and is located on land at Grove Road, Boston Spa. The site is located approximately 22.5km to the north east of Leeds City Centre and 4.5km from Wetherby. Approximately 1.6km to the north-east of the site lies the Thorp Arch trading estate.
7. The site is predominantly surrounded by development and is bounded by Grove Road to the north and Green Lane to the east.
8. Land to the north and east on the opposite side of Green Lane and Grove Road comprises residential development. There are two dwellings located to the south of the site, which front on to Green Lane. Firs Lodge, is a substantial detached house in the style of a dormer bungalow and abuts the site for over half of the southern boundary. Land to the south of the site is designated within the Green Belt. Martin House Children's Hospice and High Trees School (including High Trees Nursery) are located along the western boundary and are screened by existing trees. The Hospice and School are within the Green Belt.
9. The site comprises an open field, in agricultural use, enclosed by hedgerows to the north and east and by trees along the western boundary. Access into the site is provided by two gates. Close boarded timber fencing separates Firs Lodge from the site for the majority of the southern boundary.
10. There are several buildings located along Grove Road (north east of the site), which are located within the Boston Spa Conservation Area and have been identified as having a positive character within the Conservation Area. A key view has been identified within the Conservation Area Statement looking across the site towards Clifford Church from the junction with Grove Road and Green Lane.
11. The site lies some 500m south of Boston Spa High Street. As such, the site is, according to the Statement of Common Ground (SoCG), located within an appropriate walking distance to Boston Spa High Street, which has a range of

² The details are agreed and taken from the statement of common ground

facilities and services including a bank, post office, two churches, a library, community centre, take away, general store, public houses and local shops. There are schools which are located within the Boston Spa area.

Planning Policy

12. The Leeds Core Strategy (CS) was adopted by the Council on 12 November 2014. It now forms part of the development plan. In addition the saved policies of the Leeds Unitary Development Plan Review adopted in July 2006 (UDPR)³ remain in place with an Annex in the CS setting out those policies which it replaces.

Development Plan Policies

13. The following CS policies are of particular relevance in this case:-

- Spatial Policy 1 Location of Development
- Spatial Policy 6 The Housing Requirement and Allocation of Housing Land
- Spatial Policy 7 Distribution of Housing Land Allocations
- Spatial Policy 10 Green Belts
- Policy H1 Managed Release of Sites
- Policy H2 New Housing Development on Non Allocated Sites
- Policy H3 Density of Residential Development
- Policy H4 Housing Mix
- Policy H5 Affordable Housing
- Policy P11 Conservation
- Policy T2 Accessibility Requirements and New Development
- Policy G4 New Greenspace Provision
- Policy G7 Protection of Important Species and Habitats
- Policy G8 Biodiversity Improvements
- Policy EN5 Managing Flood Risk
- Policy ID5 Planning Obligations and Developer Contributions

14. The following saved UDPR policies remain relevant to this case following adoption of the CS:-

- Policy N34 Protected Areas of Search
- Policy GP5 All Relevant Planning Considerations

³ CD1

Relevant Local Supplementary Planning Guidance / Documents

15. The Council has produced a number of adopted Supplementary Planning Documents and Guidance some of which are considered relevant to this appeal:
 - SPG3 – Affordable Housing Policy Guidance (CD19)
 - SGP4 – Greenspace Relating to new Housing Development, 1998 (CD20)
 - SPG11 – Section 106 Contributions for School Provision, 2001 (CD21)
 - SPG13 – Neighbourhoods for Living, 2003 (CD22)
 - SPG 25 – Greening the Built Edge 2004 (CD23)
 - SPD – Travel Plans, 2012 (CD24)
 - SPD – Public Transport Improvements and Developer Contributions 2008 (CD25)

Boston Spa Conservation Area Appraisal and Management Plan

16. The Boston Spa Conservation Area Appraisal and Management Plan (CD26) was published in September 2009. The Appeal Site is located adjacent to the southern boundary of Boston Spa Conservation Area.

Draft Boston Spa Neighbourhood Plan

17. Work is progressing on the preparation of a Neighbourhood Plan which is reliant upon the adoption of the Core Strategy and the Site Allocations Plan being progressed in tandem.

Draft Clifford Neighbourhood Plan

18. An initial framework has been produced of the Clifford Neighbourhood Plan and work is on-going within focus groups. The target date for adoption is May 2015; there has been no update on its progress since the Inquiry was held.

The National Planning Policy Framework

19. The National Planning Policy Framework (the Framework) and associated Planning Practice Guidance (PPG) provide national policy and advice. In particular paragraphs 7, 8, 14, 17, 19, 34, 47, 49, 50, 85, 114-123, 187, 215 and 216 of the Framework are identified in the SoCG as significant in this case. Core Principles 3 and 11 are also identified as particularly significant.

Planning History

20. The site is allocated in the Leeds Unitary Development Plan Review (2006) (UDPR)⁴ as a Protected Area of Search (PAS) for Long Term Development (Policy N34). Land adjoining the site to the south and west is within Leeds Green Belt (Policy N32).

⁴ CD1

21. As part of the preparation of the Leeds Unitary Development Plan (2001) (UDP)⁵, the site was considered for residential development. In the UDP Deposit Draft (June 1993)⁶ the site was included as a housing allocation site⁷. The UDP Inspector did not support the allocation of the site for housing purposes due to wider strategic matters over housing distribution. He noted, however, in his report⁸ that it should be retained as PAS as it has "*valuable potential for development*".
22. The Council produced a draft development brief for the site in 1998⁹. It notes in paragraph 1.1 that "*the brief has been prepared to guide developers in drawing up detailed proposals for the site, and is intended to form a reference document against which submitted proposals and planning applications will be considered*". The draft development brief was never adopted.
23. A selective review of the UDP was undertaken in 2003 – 2004 in order to update key aspects of the plan and to extend its life to 2016. In the draft UDP Review (UDPR), the Council proposed to revert many of the Policy N34 sites into the Green Belt. Within the draft UDPR, Proposed Alteration 24/010 sought to put the site into the Green Belt. The UDPR Inspector's Report (December 2005)¹⁰ recommended that the site should be retained as PAS land and therefore no modification should be made. Paragraph 24.91 of the Inspector's Report noted:-

"I deal with the strategic aspects of the objection under Alteration 5/001 and /002 where I conclude that it is inappropriate to return PAS land to GB en masse. In this case, apart from the lower quarter, the site was unallocated land prior to adoption of the Wetherby and District Local Plan (1984)¹¹ when it was included within the GB, but it was subsequently designated as PAS in the AUDP, after being proposed as a housing allocation (H4.51). There have been no exceptional local circumstances to warrant reversing the adopted UDP Inspector's recommendation, or the Council's subsequent and recent action in following his view, that the site need not be kept permanently open."
24. The Inspector confirmed (in paragraph 24.93) that the site "*is close to local shopping and community facilities in Boston Spa*" and "*if and when the development potential of previously developed sites and allocated sites, such as the Church Fields site, is realised, and taking into account future local needs for housing and other development in the village, the objection site may be required as a long-term option*".
25. The site has been identified as 'amber' in the Leeds Site Allocations Plan Issues and Options (June 2013)¹²(SAP). This translates as a site with potential for future housing development as part of the SAP but with issues to resolve. In respect of the site, the only issue to resolve is identified as "*Local network*

⁵ CD2

⁶ CD3

⁷ CD3 Ref: H4.51

⁸ CD4 Paragraph 837.14

⁹ CD5

¹⁰ CD6

¹¹ CD7

¹² CD8

concerns, particularly cumulative impact". No reason for refusal in relation to local network concerns, particularly cumulative impact, has been put forward by the Council.

26. Whilst the first reason for refusal included the phrase '*The location of the site means that the site does not fulfil the exceptional criteria set out in the interim housing policy approved by Leeds City Council's Executive Board 13/3/13 to justify early release ahead of the comprehensive assessment of safeguarded land being undertaken in the Site Allocations Plan*', that interim policy was withdrawn on 11 February 2015. It therefore has no direct bearing on the consideration of this appeal.

The Proposals

27. The proposals comprise the development of up to 104 dwellings in outline with access for consideration now and matters relating to layout, appearance, scale and landscaping reserved for later consideration.
28. The proposed main vehicular access is taken from Grove Road. The proposed access road is 5.5m wide with 2m wide footways on each side. Pedestrian crossing points are proposed at the Grove Road access and the Grove Road carriage-way would be widened to 5.5m. A secondary point of access to serve three dwellings would be provided along Grove Road which utilises an existing gate into the site. A pedestrian and cycle access is proposed off Green Lane towards the south eastern corner. A further pedestrian access point would be provided to the north eastern corner of the site. Alternative surface treatment would be proposed at the points of vehicular/pedestrian access.
29. The development would provide additional footpath links into and out of the site along Grove Road and Green Lane. The proposals also include provision for an area of car parking for Martin House Hospice, which would comprise 20 car parking spaces. These spaces would need to be constructed with permeable materials and a no dig zone around the root protection areas of adjacent trees. This would need to be dealt with through a future reserved matters application.
30. The points of access proposed would allow for the retention of boundary hedges along Grove Road and Green Lane frontages, save for removal of some sections which would facilitate the creation of vehicular and pedestrian access points. Some trees would also need to be removed at the main access point.
31. The trees along the western boundary are subject to a Tree Preservation Order (TPO), however, a number of trees were identified as diseased and dying and, as such, the trees posed an immediate risk to health and safety. The trees were subsequently felled following the Council's approval of an application for works to trees (29 March 2013) and replacement planting has now been undertaken.
32. The overall density of the development would be around 27 dwellings per hectare, based upon a total of 104 dwellings.

S.106 Agreement

33. A s.106 Agreement was submitted to the Inquiry which provides for affordable housing (35% or to accord with the policy requirement at the time if the commencement date is two years from reserved matters permission), a travel

plan (with a £2,520 monitoring fee), a transport contribution towards improving transport infrastructure (£1226.21 per dwelling linked to RPI¹³ to a maximum of £127,526 RPI linked), a contribution for Metrocards for future occupiers of the proposed dwellings (£462 per dwelling), a contribution towards education (£4763.82 per dwelling RPI linked to a maximum of £495,437 plus RPI), an off-site public open space contribution (£157,165 RPI linked) and transfer arrangement for the management of on-site public open space, parking for the adjoining hospice, and arrangements for the employment of local contractors for the works.

Main Issues

34. The main issues in this case are whether the site should be considered favourably for housing having regard to national and development plan policy in respect of housing land supply and delivery including whether the development should be resisted on prematurity grounds; and, whether the site would be sustainable including in terms of accessibility.

Other Agreed Facts

Housing Supply 2012-2014

35. It is agreed between the main parties that delivery of housing for 2012-2014 based on a requirement of 3,660 dwellings per year fell short by 2,363 dwellings. This represents a change from the position in the original SoCG.

Housing Requirement Base Figure

36. The CS now establishes that 3,660 dwellings are required up to 2016/17. The Council indicates that thereafter 4,700 dwellings will be required. This has not been disputed.

Highways Matters

37. There are no putative reasons for refusal related to highways matters. The location and design of the proposed main vehicular access and the acceptability of the visibility splays and radii are agreed.
38. Revised highways drawings (8 October 2013) addressing the following are agreed as acceptable:
 - Additional crossing points added at the Grove Road access;
 - Grove Road carriageway has been widened to 5.5m;
 - Alternative surface treatment is proposed at the points of vehicular/pedestrian access;
 - Hedgerow along Grove Road has been retained, save for the creation of the vehicular access points
39. The only off-site improvements necessary to bring forward the Appeal Site relate to the site access junction works onto Grove Road as shown on Plan BS/Plan/out, rev B.
40. The mode split data required for use within the Transport Assessment is agreed. As is the assessment of the impact of the Grove Road / Clifford Road Junction.

¹³ Retail Price Index published by the Office for National Statistics

41. The need for additional car parking at Martin House Hospice Parking is agreed.
42. In terms of accessibility it is agreed that the Appeal Site is within recommended distances to some local services, including primary and secondary education.

Flood Risk and Drainage

43. The Council has considered the supporting Flood Risk Assessment and has raised no objections in principle, subject to planning conditions relating to submission of details of a surface water scheme and its implementation and flood mitigation implementation.
44. Neither Yorkshire Water nor the Environment Agency has raised objections to the appeal proposals subject to the imposition of suitable planning conditions.

Contamination

45. The combined desk study and site investigation report demonstrates that there is no contamination risk at the site. No objections have been raised subject to the imposition of planning conditions.

Nature Conservation

46. The appeal proposals retain the majority of the biodiversity features along the boundaries of the site and there are no significant biodiversity concerns raised. A condition has been requested to offset the loss of bird nesting and bat roosting features and to protect wild birds during nesting season.

Archaeology

47. A geo-physical survey was undertaken, which demonstrated that the only anomalies present relate to modern farming practices with no underlying or overlying archaeological features present. West Yorkshire Archaeology Advisory Services have therefore recommended that the results of the geophysical survey be tested by the excavation of trenches, which can be secured by planning condition.

Noise

48. There are no dominant noise sources within the vicinity of the site. Construction management requirements to prevent any impact on local amenity levels during the construction period can be secured via the imposition of a suitable planning condition.

Air Quality

49. The Appeal Site is not located within an Air Quality Management Area. Due to the scale of the development proposals, there will be no associated air quality issues.

Design and Layout

50. Matters of layout, appearance, scale and landscaping are reserved for subsequent approval and would be dealt with by appropriate planning conditions.

Trees

51. Impact upon trees on the Appeal Site is not a putative reason for refusal, although any layout as part of a Reserved Matters submission would need to have regard to trees protected by the TPO.

The Case for the Council¹⁴

52. The starting point, as with any planning decision is the development plan, here the Leeds CS and UDP, particularly policy N34, are most relevant. The appellant appears to be arguing that policy N34 amounts to effectively an allocation of the site for housing but that is not in accordance with the Framework, and therefore should be given no weight.
53. N34 is a saved policy in the UDP, it therefore necessarily should be given weight. Secondly, policy N34 does not purport to allocate the land for housing (or other development), it reserves it for future consideration of whether or not it should be used for housing. The policy itself uses the words "the possibility" of future development, and this is further supported by the supporting text, which expressly says that any decision as to whether the site should be allocated for housing should take place through a future comprehensive review.
54. In order to be appropriately safeguarded in the first place it is of course correct that the site had to be tested against the policy in Planning Policy Guidance 2 – Green Belt (PPG2) - Annex B¹⁵. But it is clear from this text as well, that the consideration was not whether the site should be used for housing, but whether it was appropriate to take it out of the green belt, in order to consider at a future date through a Local Development Framework (LDF) review whether it should be so developed or not.
55. It follows that no assumption can be made that this is an appropriate site for housing. Policy N34 provides that such a decision should be made through the LDF review. Furthermore, whatever consideration took place in the UDP and UDP process, the material considerations are now different. This is because:-
- (a) the national policy background is different because the Framework puts sustainability at the heart of all planning decisions, which was not the case at the time of the UDP;
- (b) the range of sites and options that need to be considered before deciding whether this is a suitable site are now different; for example there was no new settlement at Spen Common Lane under consideration at the time and proposals for Thorp Arch new settlement were dismissed by the UDP Inspector at that time. These are good examples of proposals which would not have been acceptable at the time of the UDP adoption, because of the sequential test, but might now be seen to have real sustainability benefits; and,
- (c) there was no sustainability appraisal carried out between all the different sites in a way which allowed a true comparative analysis to be undertaken.

¹⁴ For the avoidance of doubt the cases have been updated to reflect post sitting exchanges as appropriate

¹⁵ CD15

56. Policy N34 is not out of date when set against the Framework. Paragraph 85 of the Framework has the same approach as the policy for safeguarding land and it is not being released until a local plan review has been undertaken. There is nothing in the Framework which suggests that land that has been safeguarded under an existing policy, should now be released in advance of a comprehensive review. Therefore, policy N34 is not an outdated policy.
57. Paragraph 14 of the Framework requires a balance to be struck, and the fact that the land falls under policy N34 and therefore is not to be released until there is a comprehensive review, is a material factor in that balance. The need for housing is plainly part of that balance. But there is nothing in paragraph 14 which suggests that the support for a plan led approach (paragraph 17 of the Framework), which is the essence of policy N34, should be ignored in the planning balance.
58. In conducting the planning balance under paragraph 14 it is necessary to balance the benefits of the development against any harm. The harm here is harm from making a decision in advance of the SAP Development Plan Document (DPD) process. That is important harm for two reasons. Firstly, to make a decision at this stage as to which sites should be developed, when the site is specifically stated in policy to require a comprehensive review, is to deprive the community of their input into the site selection process. Secondly, to make a decision about a PAS site, which by necessity has no policy support at this stage, is to negate the process of undertaking a comprehensive, and systematic assessment, of comparative sustainability, through the sustainability appraisal.
59. This is particularly important in the Outer North East (Outer NE) area, where there are strategic choices to be made, at the allocations stage of the DPD, as to where development should be placed. It is clear from the CS figures in Spatial Policy 7, which gives a target for Outer NE of 5,000 and therefore a residual of 3,900 that the necessary quantum of houses cannot be delivered without some green belt release. This is expressly supported in Spatial Policy 10. It is equally clear that there are insufficient sites marked as "green" within the SAP Issues and Options report, to meet the need. Therefore, choices have to be made between pepper-potting new sites around existing settlements, putting a large quantum of housing on the brownfield site at Thorp Arch, and/or supporting a new settlement at Spen Common Lane.
60. The appellant argues that the CS Spatial Policy 1 supports housing development at smaller settlements, which includes Boston Spa. This is correct, but the reference in the CS is to 'some' development. This shows the importance of choosing carefully how much housing should be provided, which smaller settlements should provide that housing and where it should be located within them.
61. It cannot be assumed, as the appellant seems to suggest, that the appeal site must be sustainable, and therefore suitable because it is a PAS site.
62. Boston Spa is a smaller settlement, but it has already had a considerable amount of new development with the Church Fields development. The appeal site is reasonably accessible to facilities within Boston Spa itself, but it is not well placed for residents to access employment, retail or services outside Boston Spa. This is particularly important because the village itself has only a limited

range of these uses, and therefore it is inevitable that residents of the proposed development would want to travel to Leeds, Wetherby and elsewhere on a regular, probably daily basis. As the UDP Inspector said Boston Spa is not a particularly accessible location. The appeal site is a good walk from the nearest bus stop which is of much use (i.e. a half hour rather than a two hour service), in contrast with Church Fields where the regular and more frequent bus service passes the entrance to the site.

63. In reality this would be a car borne development, where the opportunity to use any mode of transport other than the private car would not be attractive and the choice is theoretical rather than real.
64. Therefore, it follows that despite its PAS status, there may well be sites that are more sustainable over the lifetime of the development than the appeal site. The appellant cites a series of what it calls sustainability benefits of the proposal, but these are virtually all matters which could be equal or greater benefits on some other site if housing was developed there instead.

Five Year Land Supply

65. It is of central importance to the determination of this appeal whether the Council has a 5 year housing land supply (HLS). If it does then the planning balance applies within paragraph 14 of the Framework, if it does not then paragraph 49 applies.
66. The issues on the 5 year HLS can be broken down into 'The Requirement' which now includes a step-up following the CS adoption, whether there is a 5 or 20% buffer and the period over which the back-log should be spread. It is then necessary to assess this against 'The Supply'.

The Step-Up

67. CS Spatial Policy 6 sets an ambitious housing target, based on very optimistic economic growth forecasts. Even with the step-up approach, which is now accepted, where less housing is required in the initial part of the plan period, the target until 2016/17 is 3,660 new dwellings which is challenging with 4,700 thereafter. The delivery of that quantum of housing, given the levels of new infrastructure needed to deliver such levels, and the necessary lead-in time make it particularly difficult. Infrastructure here is not merely roads, but also public transport provision and schools.

The Buffer - 5 or 20 %

68. The test in Framework paragraph 47(2) for whether a local planning authority should be required to plan for a 20% buffer is whether there has been "persistent under delivery". This phrase is not defined. The appellant argues that persistent under delivery should be judged against the record over the last five years, and the appellant relies on a number of Inspectors' decisions where it has been said that if the land supply looks five years forwards, so it is reasonable to look five years back.
69. The starting point against which to assess any under delivery is the most up to date objectively assessed housing requirement. Given the substantial amendments to Leeds' population in recent years this must be the Core Strategy target with a base date of 2012. The Core Strategy Inspector has not

only accepted that 70,000 dwellings is appropriate, he has accepted that it must implicitly include un-met need. Therefore to apply a further buffer to a level of under delivery before the base date for the plan must be double counting.

70. But even if one accepts the principle of looking back before 2012, the recently published PPG in Paragraph: 035 (Reference ID: 3-035-20140306) suggests a different approach because it says that it should be useful to consider a period of "peak and trough". This is one of a number of occasions when the PPG seems to be taking, in the Council's view, a somewhat more realistic and less doctrinaire line than the Framework. If one should consider a period of peak and trough, then given the recent history of the UK economy it is inevitable that the period to look back over is 10 years, i.e. to 2004, and not five years to 2008. During the last five years the monitoring data is almost entirely taken in a period of recession and therefore does not give a true picture of the housing delivery of the Council. It is of central importance in this regard that until the recession hit in 2008 Leeds was a very well performing authority, generally well exceeding its housing target.
71. The recession of course hit the whole of the UK, but there are factors which made the issues around the delivery of housing particularly extreme in Leeds. Firstly, Leeds had been delivering very large quantities of city centre housing, a proportion of it on buy to let mortgages, and this was the part of the housing market most badly, and rapidly, hit by the credit crunch. Secondly, the housing market in the north of England has been much more badly effected and for longer than the market in the south east, and much of the south of England. It is therefore a mistake to simply apply the approach in other parts of the country to Leeds.
72. It is quite clear from the data that the reason for Leeds' failure to deliver on the Regional Spatial Strategy (RSS) target post 2008 was not a lack of planning permissions, or even a lack of greenfield permissions, but a product of the recession and the flawed target in the RSS.
73. The target in the RSS stepped up in 2008 from 2,260 to 4,300. This came at precisely the wrong time, as it coincided with the recession. It was also a figure which, with the benefit of hindsight, was never going to be delivered. This is because it was based on a flawed forecast of how many people were in Leeds at the relevant time, and therefore the quantum of housing need. The subsequent analysis of the 2011 census data showed that the population of Leeds was some 50,000 less than had been forecast. However, given the abolition of the RSS this data was never used to rebase the pre-2012 housing forecasts in Leeds.
74. This means that it would be unsound to assess "under delivery" against that RSS target. More fundamentally it means that it would be wrong to consider "need" against that RSS target because that need simply did not materialise.
75. The appellant persistently said that the Council is now using a very similar target to that in the RSS, but the critical point is that it is of a different, and correct, base for future years, not the incorrect historic data. It is true to say that the Council is again relying on optimistic economic forecasts, but that does not mean that there has been under delivery against a sound target over the last five years.

76. It is very difficult to see what persistent under delivery can be judged against, when it is clear that the RSS target was flawed or what need is theoretically being met by the provision of a 20% buffer. The purpose of the buffer is not to serve as a punishment for local authorities, but as a way to ensure that genuine housing needs are met.
77. The next point on persistent under delivery, is that when it became clear that the Council's high brownfield target needed to be supplemented after the Grimes Dyke decision¹⁶, the Council took a series of steps to release greenfield land and provide a choice of sites to the housing industry. It released all the phase 2 and 3 sites from the UDP, even though this was some years before such release had been planned. This amounted to some 7,000 greenfield units. It is important to note that relatively few of these have progressed and started to deliver housing, despite the House Builders Federation (HBF) stated plea for more greenfield release. More recently, in 2013, Leeds adopted the Interim Policy to selectively release some PAS sites. In deciding issues around under delivery, it must be correct to look not only at the conduct of the Council but also the house building industry. If the Council has released sites for development, but the industry does not choose to bring them forward, then it cannot simply be said that the Council has under delivered.
78. Therefore, if one looks back over 10 years, the Council has not persistently under delivered. In the period where there has been under delivery against target this is as a result of the recession and because the target was flawed. The evidence shows that the Council has taken very significant steps to remedy recent under delivery.

Spreading the backlog

79. It is accepted that the starting point here is five years. However, it is necessary to have regard to the impact such an approach would have to the proper planning of the Leeds City Council district. This is the point to bear in mind that the Framework does not suggest that the delivery of housing simply trumps the fundamental objective of sustainable development, and the specific objective of a plan led system. The evidence shows that the actual effect of the appellant's arguments is to make a plan led approach in Leeds impossible to achieve.
80. The requirement suggested by the appellant at the Inquiry massively exceeded the housing numbers achieved even at the height of the boom, and is unrealistic compared with the current level of provision. The appellant argues it is not that much higher than that proposed by the Council over five years, but the critical point there is it is not assumed by the Council that it will increase provision from 2,800 homes (which included 400 empty homes and 574 small windfalls) up to anything like 6150 (the requirement the appellant felt should be in place when the Inquiry was sitting established prior to the step-up being accepted) in only one year. It is quite true that even on the Council's figures there will be a considerable challenge to meet. But in the light of a rising market this is an achievable challenge, as opposed to one that will lead to inevitable failure.
81. The effect of this approach is therefore to impose upon the Council a figure for testing the five year HLS which it cannot possibly meet. That means that it will

¹⁶ APP/N4720/A/09/2117920 SoS Decision

continue to under deliver against target, and therefore more back-log will have to be added. That means it will necessarily continue to under deliver, through no substantive fault but simply as a product of the way the numbers work. The effect of this will be that there will be no plan led system in Leeds City Council's area, and the SAP DPD process becomes largely pointless, certainly in terms of the next five years. Any greenfield site chosen by the house builders, which is not in the green belt will face the same argument, and absent very strong site specific issues, will either have to be released for housing, or fought through s.78 appeals. These may well be lost because of the five year HLS position. It is difficult to think of a situation which would more undermine a plan led system, and public confidence in being involved in the planning system.¹⁷

82. The Council considers that the approach should be to spread the acknowledged backlog from the last two years over 10 years, in order to ensure that it can be caught up in a sensible manner. It is also important to have regard to whose needs are being met by imposing high requirements in the next year. There is no evidence that there is actually a need, which could result in purchase of that quantum of housing, without a massive injection of public funds, which undoubtedly will not happen. The figures from the appellant's rebuttal¹⁸ show that the private sector housing industry only delivered 1,136 units (including 121 affordable dwellings through s.106) in 2013/14.

Supply

The Strategic Housing Land Availability Assessment (SHLAA)

83. The test for whether sites should be included in the five year HLS is set out in paragraph 47 of the Framework and footnote 11. Sites should be available now, offer a suitable location and be achievable with a realistic prospect that housing will be delivered on the site within five years.
84. The PPG expressly supports the use of a SHLAA partnership in testing whether sites are deliverable. The Council set up a partnership and its terms of reference involve the provision of expertise and knowledge to come to a view on the deliverability and developability of sites, and how market viability may be affected by market conditions.
85. However, the SHLAA Partnership has not produced any analysis of viability of individual sites which the Council has put forward as falling within the five year HLS, limiting its input to one line comments, such as "*not viable*" or "*no developer interest*". In stark contrast the Council has commissioned the District Valuer Service (DVS) to produce a detailed viability study of a sample of sites in order to reach a view on viability.
86. The Council's approach entirely accords with Government guidance. It is appropriate to test viability through consideration of a sample of sites. The PPG paragraph 005 (Reference ID: 10-005-20140306) states that "*Evidence should be proportionate to ensure plans are underpinned by a broad understanding of viability. Greater detail may be necessary in areas of known marginal viability or where the evidence suggests that viability might be an issue*". This is what the

¹⁷ Note the requirement was reduced when the CS was finalised

¹⁸ LPA A - Martin Elliot Rebuttal Appendix 7

Council has done through its use of a broad indication, supplemented by more detail in the inner area and city centre through the DVS.

87. Moreover, PPG Paragraph 006 (Reference ID: 10-006-20140306) states that "*Assessment of samples of sites may be helpful to support evidence and more detailed assessment may be necessary for particular areas or key sites*" and in an area as large as Leeds any other approach would be impossible. The viability study has been carried out by an entirely independent, experienced and expert body, i.e. the DVS. It sets out all the assumptions upon which it is based in a wholly transparent manner. It also sets out the evidence upon which it is based, see for example the section on developer profit. This is an interesting section because it shows the openness of the DVS approach and the reliance on actual examples. The appellant says these are 'stressed' negotiations, but all that means in reality is that this is the level of developer profit, which house builders are actually prepared to accept, as opposed to those which they would wish to achieve.
88. The PPG expressly encourages the use of transparent and evidence based material to support the analysis of the five year HLS. Again, the approach of the DVS is in stark contrast to that of the house builders whose assessment is not transparent, being limited to one or two lines and is not based on any evidence.
89. The appellant has done everything that they can to rubbish the DVS study, presumably because they appreciate that the Council's evidence on deliverability of a five year HLS is now far superior to that of themselves, or the house builders generally.
90. The HBF are made up of volume house builders who generally are not the developers of city centre schemes. This has two consequences: many of the city centre sites are ones they have no knowledge of and their comments are based simply on general assumptions about the state of the market. Further, the HBF (and the appellant) have a clear interest in suggesting that city centre development is not viable because it increases the prospects of planning permissions on greenfield sites around Leeds.
91. The HBF approach is based on a very pessimistic approach to city centre and inner area development prospects over the next five years. There is a serious problem for Leeds if the requirement side of the equation is based on a highly optimistic economic analysis (assuming that large numbers of people will come to Leeds and will be in a position to buy or rent housing) whilst on the supply side a very pessimistic view is taken to the housing market (that properties will not be built to meet that demand). This, in the Council's view, simply cannot be the correct approach. If the assumption is that there will be a high level of economic growth, fuelling high levels of demand, then it must follow that the development industry (in its widest sense) will act to meet that demand.
92. In a very large urban authority such as Leeds where the need is driven by economic growth, the effect of such a mismatch will almost inevitably be an inability to provide a five year HLS. It is essential that the same approach to general economic conditions is taken to both sides of the analysis.
93. The DVS Study is based on transparent and evidence based assumptions. The DVS visited the sites and it is clear from the schedule that a good deal of

information was known about each site. This is not full knowledge, but that is impossible at this stage of the process. The DVS study focused on sites in the areas where the earlier GVA¹⁹ report had indicated sites were not viable.

94. On the level ascribed to developer profit, the DVS has used the evidence base from land sales, which is therefore based on real life financial decisions by house builders. The PPG is entirely clear that planning for housing should not be based on the level of profit that the developer necessarily seeks. PPG Paragraph 025 (Reference ID: 10-025-20140306) states "*Authorities do not have to allocate only those sites that provide the maximum return for landowners and developers.*" The PPG looks to a reasonable landowner and developer, and the DVS study shows what reasonable landowners and developers have been prepared to accept in a real situation.
95. The appellant questions the approach to abnormalities. But the DVS has considered the factors on each site and has ascribed an appropriate figure for each site into the schedules. The most the appellant could say was that they 'looked a bit light'.
96. The appellant challenges the build costs. However, the Council records²⁰ that the build costs are based on Building Cost Information Service (BCIS) standard rates, reduced to take off contractors' margin to avoid double counting. The letter from the DVS dated 29 May, confirms the approach.
97. The appellant points back to the GVA Report for the Community Infrastructure Levy (CIL) analysis, and the fact that it concludes that housing in the city centre is not viable. The GVA report was drawn up in January 2013. The following points can be made:
 - (a) The Council commissioned an update to the GVA Report which was submitted to the CS Inspector for the May 2014 Hearing. That update entirely accords with the conclusions of the DVS report on viability.
 - (b) The GVA report was produced for the purposes of fixing CIL contributions. It is entirely appropriate that it uses different margins and assumptions from the DVS report, because it is intended to take a highly cautious approach. It would be wholly counterproductive to put CIL at a level which impeded viability and therefore the delivery of previously developed sites in the city centre and inner urban area.
 - (c) This is particularly the case because CIL cannot be separately negotiated on individual sites, so it has to be based on a very generic approach, whereas the DVS report was much more site specific and detailed in respect of the sample sites.
98. The appellant comments that they still don't see cranes across the Leeds skyline. This is not a good point as Leeds is coming out of recession rather than being at the height of a building boom. However, both the financial evidence from DVS, and the evidence of interest in renewing planning permissions, renegotiating schemes and interest in sites, supports the analysis in the SHLAA.

¹⁹ GVA are a firm of property consultants used by the Council

²⁰ LPA A - Martin Elliot's Further Note on the DVS Viability Study

Further, the experience of the last boom was that once the market picks up city centre sites can come forward very quickly.

99. In respect of the city centre and main urban area sites, residential development entirely accords with planning policy. Therefore, even if there are some objections, the principle of development will be established, and the sites can come forward rapidly.
100. The DVS found four sites were not viable, but with one exception these were sites which the Council had not included in the five year HLS. The one exception was St Hilda's Church. This is a site which is marginally unviable in the DVS report, but is in an area which the GVA report considers is likely to become viable within 5 years. The economic viability study shows that the inner area has seen an improvement in viability between September 2012 and May 2014, marginal areas can be improved. As the PPG makes clear at Paragraph 022 (Reference ID: 3-022-20140306) "*Where constraints have been identified, the assessment should consider what action would be needed to remove them (along with when and how this could be undertaken and the likelihood of sites/broad locations being delivered)*". It does not say remove them altogether.
101. Much was made of the judgement in Wainhomes²¹ but on proper examination it was clear that this case entirely supports the Council's approach to five year HLS. The principles that can be drawn out are that;
 - (a) sites without planning permission where there are objections should not be discounted, but it should not be assumed that 100% of such sites will be delivered in five years²²;
 - (b) the weight to be attached depends on the quality of the evidence base²³;
 - (c) the weight to be attached is a matter for the Inspector²⁴;
 - (d) it should be noted that a five year HLS was found by the Inspector in that case, and that finding was upheld by the Judge.
102. For all these reasons the DVS study is the best evidence on viability in Leeds which has been produced to this Inquiry, and it entirely supports the Council's position in the SHLAA. It is inevitable in an authority as large as Leeds, where reliance is not placed on a small number of strategic sites, that a broad approach has to be taken to deciding five year HLS. The DVS report entirely supports the Council's position that the SHLAA total for the five year HLS is 21,131.
103. There were then five other categories which the Council relies on to make up the five year HLS²⁵:-

PAS sites which accord with the interim policy – 947 dwellings

²¹ APP A - Mark Johnson Appendix 4

²² Wainhomes Judgement [2013] EWHC 597 (Admin) paragraph 34(iv)

²³ Wainhomes Judgement paragraph 35

²⁴ Wainhomes Judgement paragraph 54

²⁵ LPA A - Martin Elliot's revised Appendix III

Windfalls under 5 units -	2,500 dwellings
Anticipated larger windfalls –	600 dwellings
Long terms empties –	2,000 dwellings
Prior approvals –	319 dwellings

104. An average of 400 dwellings a year has been given for empties. This is based on two pieces of evidence, those being the historic data on the Council's success in bringing long term empties back into use with a 4 year average of 396 dwellings a year and a recent 2 year average of 412 dwellings a year. The new initiatives which are now being used to continue this work are additional and this gives every reason to believe that the figure of 400 dwellings a year will be met or exceeded.
105. Larger windfalls have been based on clear historic evidence of larger sites coming forward which were not picked up in the SHLAA. Given the nature of Leeds, a large urban area with a lot of previously developed land, it is hardly surprising that some sites will slip through the SHLAA net.
106. Prior approvals arising from a new initiative introduced by the Government to produce more housing are, in the Council's view, likely to produce a small amount of new housing.
107. Therefore the total five year HLS, as calculated by the Council is 27,980. This is set against a requirement as assessed by the Council as being 22,581. This is on the basis of its approach and a calculation consisting of the step-up, a buffer at 5% and the backlog being spread over 10 years. The alternative figures set out in the SoCG are of no relevance given the confirmed CS approach to the step-up.

Council's Conclusion

108. The starting point is that UDPR Policy N34 sets out that the site should not be released for housing until there is an LDF review. Moreover, that review is taking place through the SAP DPD. The Council considers that it has a five year HLS and in those circumstances paragraph 14 of the Framework applies and paragraph 49 does not. There would be clear harm from releasing this site at this stage because it may well not be the most sustainable location and such a release undermines the entire process of the DPD. For these reasons planning permission should be refused.

Additional Matters Post Inquiry

109. The Council notified the Planning Inspectorate of its intention to adopt the Core Strategy following the Inspector's Report. At this stage the Council reasserted its view about the buffer by referring to the Inspector's Report which says at paragraph 16 "*Between 2008/9 and 20011/12 housing delivery in Leeds fell below the rates set in the Regional Strategy. The Regional Strategy has been revoked and its housing targets were underpinned by assumptions which the 2011 census and later projections have shown to be inaccurate. This significantly reduces the weight to be attributed to under delivery against the Regional Strategy target and the need to address any shortfall against the Regional Strategy through the Core Strategy. The principal reason for the difference is attributed to the over estimation of levels of international in migration. There is some merit, in my view, to the argument that in migration*

will be affected by the supply of housing but the difference in population estimates and the 2011 census are such that it is unlikely to be all as a result of housing delivery being lower than prescribed by the Regional Strategy".

110. The Council also note that the CS Inspector accepted their view that 400 homes could be returned to the housing stock through use of empty homes.
111. In addition the Council refer to the 2014 SHLAA which it approved on 17 June 2014. Whilst acknowledging it is not evidence that was heard or tested at the Inquiry, the Council notes that it identifies increases to the five year HLS sites from 21,131 to 22,503 homes. There is also an update on the PAS sites which notes that the Calverley Lane, Farsley, site has been granted permission for 70 dwellings and Spofforth Hill, Wetherby, has been granted permission for 325 dwellings. Those sites had been included in the five year HLS, but the PAS site at Methley, also granted planning permission since May 2014, for 181 homes had not.
112. In further representations following the new household projections the Council sets out that it does not consider that those projections simply replace the provisions for a housing requirement in the Adopted Core Strategy; this is a view which the Council has made public in a press release.
113. However, the Council indicates that the latest projections support its view that there has been a slowing of household formation. Moreover, the Council restates that the mismatch it has identified between an optimistic SHMA and pessimistic approach to delivery has the potential to cause harm to the Core Strategy. To allow this site which is not intended for development but proposed to remain a protected area of search would undermine the plan-led approach to development and be more harmful than any harm which might arise from not meeting local needs for housing on this specific site now.
114. Given the Core Strategy seeks to focus housing in the main urban area if there is slower household formation less development should take place in the smaller settlements.
115. The Council also draws attention to the Bagley Lane, Farsley, appeal (APP/N4720/A/13/2200640) determined by the Secretary of State where it was found that the housing Land supply had a positive margin of some 2,000 dwellings.

The Case for the Appellant

Development Plan

116. As with all appeals, the development plan position is of central importance. The UDP has saved policies in accordance with the terms of the 'Saving Letter'²⁶ which expressly provides that "*Where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions.*"

²⁶ CD14

117. In this case the relevant policy changes relate to national policy in respect of the introduction of the Framework and associated PPG and local policy in the CS.
118. There is now a presumption in favour of sustainable development in the Framework. There is also a presumption in favour of the grant of planning permission where the development plan is "*absent, silent or relevant policies are out of date.*"
119. Much time has been spent at the Inquiry to determine whether or not there is a five year HLS. If there is not, then it follows that relevant policies for the supply of housing land cannot be regarded as up to date²⁷ so that the presumption in favour of grant of planning permission under paragraph 14 of the Framework applies.
120. There is a separate reason why the presumption in paragraph 14 applies. The CS commits the LPA to providing 70,000 homes during the plan period 2012-2028 which started 2 years ago. However, the UDPR does not have policies which deliver or identify the location of 70,000 new homes. There is no existing development plan document which identifies where they should be located. The development plan document that is proposed to identify the location of those 70,000 dwellings is the SAP DPD. That is at an early stage of preparation. The Council's Committee Report dealing with the appeal site described the SAP DPD in these terms "*Public consultation on the Site Allocations Plan Issues and Options took place from 3 June and ended on 29 July 2013. Since this is at an early stage, no weight should be attached to this document. The Site Allocation Plan Document will provide site allocations and details that will help to deliver the Core Strategy long term spatial vision, objectives and policies, ensuring that sufficient land is available in appropriate locations to meet the targets set out in the Core Strategy.*"²⁸
121. The Annual Monitoring Report establishes the timetable for the SAP DPD as being publication in 2014, examination in 2015 and adoption 2016. Until the SAP DPD is adopted there will be no development plan document which identifies how the 70,000 homes which the CS is committed to are to be accommodated. This fact creates a separate route into paragraph 14 because either the UDPR housing supply policies are 'out of date' because they do not identify where the 70,000 homes that the CS requires are to be located and/or the development plan is 'absent or silent' as to where the 70,000 dwelling should be located until the SAP DPD is adopted, despite the fact that the CS plan period started over two years ago in 2012.
122. There is a further reason why the balance of advantages and disadvantages in paragraph 14 is put into play in this case. The CS was subject to a pre-submission change which expressly introduces the operation of this paragraph 14 balance into the CS "*3.4 To ensure that the positive sustainability aspects of the National Planning Policy Framework are embodied into this plan, the following policy will be relevant to all development proposals*": -

"General Policy

²⁷ Framework paragraph 49

²⁸ CD11 paragraph 7.10

When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions of Leeds.

Planning applications that accord with the policies in this plan (and where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant planning permission unless material considerations indicate otherwise – taking into account whether:

- *any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole;*
- *or specified policies in that Framework indicate that development should be restricted*²⁹. (emphasis added by appellant)

123. It is clear therefore that new CS policy at paragraph 3.4 applies in this case because the CS commits to provision of 70,000 homes in the plan period but does not contain a policy which identifies where they shall be located, even though the CS plan period is well under way. This in turn means that, irrespective of the five year HLS position, the presumption in favour of grant of planning permission under Framework paragraph 14 applies in this case and planning permission should be granted unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.*"

124. UDPR policy N34 and its supporting text are relevant to three of the 'main issues' in the case, namely 'prematurity', 'availability' and whether the proposal should be 'considered favourably'. The UDP / UDPR history shows that the appeal site was removed from the green belt for two reasons: to facilitate future development should that be necessary and to enable green belt boundaries to be drawn in both plans which would endure. The second justification for policy N34 is especially relevant to the SAP DPD process which is being undertaken because the Council asserts that green belt adjustment will be an "*inevitable*"³⁰ part of that process. If that be right, it is highly relevant and material that the appeal site has been given the designation that it has with the express intention of avoiding the need to adjust green belt boundaries in the future. The Council's resistance to use the site for the purpose for which Policy N34 intended it is therefore difficult to fathom. The justification for this reluctance is a miasma of confusion and misinterpretation of policy. The reason given for categorising the site as 'amber' in the Issues and Options paper is "*Amber – sites which have potential but there may be issues which need to be resolved, or the site may not be in such a favoured location as those highlighted in green.*"³¹

²⁹ CD17(b) paragraph 3.4 and CS

³⁰ The appellant notes that this was repeatedly asserted in cross examination

³¹ CD8(b) page 10

125. Sustainability is multi faceted and it is not a concept first invented in the Framework. It is perfectly clear that the concept was well understood in PPG2 Annex B when the qualities needed for safeguarded land were identified:

"Identifying safeguarded land

B2 Safeguarded land comprises areas and sites which may be required to serve development needs in the longer term, i.e. well beyond the plan period. It should be genuinely capable of development when needed.

B3 Safeguarded land should be located where future development would be an efficient use of land, well integrated with existing development, and well related to public transport and other existing and planned infrastructure, so promoting sustainable development.

*B4 In identifying safeguarded land local planning authorities should take account of the advice on housing in PPG3 and on transport in PPG13. They should also have regard to environmental and landscape quality (so far as is consistent with paragraph 1.7 of this PPG); to the contribution which future redevelopment might make to remedying urban fringe problems, producing attractive, well-landscaped urban edges; and to the advice in PPG7 on protecting the best agricultural land."*³²

126. It is, in the appellant's view, simply extraordinary that, having adopted two plans (UDP and UDPR) that acknowledged that the site is sustainable because of its accessibility, its acceptability in landscape and environmental terms and the fact that it would be deliverable when and if required, the Council is now choosing to reject the site on the basis it is not sustainable. It has learned nothing from the Church Fields appeal where it was clearly established that Boston Spa had adequate connections to other destinations. "... *Boston Spa is quite close to significant sources of employment – notably those at Thorp Arch Trading Estate, Wetherby and Tadcaster. Moreover, the Church Fields site is close to several bus stops and the Section 106 obligation seeks to encourage the use of local buses. Added to that, it is within easy walking distance of Boston Spa's shopping facilities, and most of its schools. The SoCG (Planning) describes it as having a high level of sustainability in relation to accessing local services within Boston Spa. I agree.*"³³
127. It is equally wrong to choose to ignore the development plan history of the site and the establishment at two development plan inquiries of the 'in principle' acceptability of development at the appeal site. Members of the public had the opportunity to object to both processes if they had chosen to do so. The over-emphasis on the emerging SAP DPD process (which still has far to go) deliberately removes from consideration this important development plan history and the public's previous opportunity for involvement in it. Public involvement in the planning process was not an innovation of the Localism Act: it was also a requirement when the UDP and the UDPR were brought forward.

³² CD15

³³ APP B- David Rolinson Appendix DMR/APP/8, para 68

128. The modifications to CS Spatial Policy 6 have a special relevance to the Council's case that development of the appeal site is inappropriate because of its relationship, or the absence of a relationship, with larger settlements. The appellant explained that the changes, though slight, are important to this proposal "...*guided by the settlement hierarchy, the Council will identify.. dwellings...to achieve the distribution in Tables H2 and H3 in Spatial Policy 7 using the following considerations:*

- i) *sustainable locations (which meet standards of public accessibility – see the well-connected city chapter), supported by existing or access to new local facilities and services, (including educational and health infrastructure),*
 - ii) *preference for brownfield and regeneration sites,*
 - iii) *the least impact on green belt purposes, (a will be seen later this is a commitment obviously relevant to the SA DPD process)*
 - iv) *opportunities to reinforce or enhance the distinctiveness of existing neighbourhoods and quality of life of local communities through the design and standard of new homes..."³⁴ (the appellant has used underlining to identify the pre-submission changes)*
129. The final aspect of the development plan to consider is the clear (and appropriate) acknowledgement that if there is no five year HLS, release of the appeal site would accord with Policy N34 albeit at a S78 appeal and not as part of the development plan review as the policy had intended. When Policy N34 was written there was no expectation that there would be any need for the site to be released before the end of the plan period and hence use of the expression "*Given the emphasis in the UDP on providing for new development within urban areas it is not currently envisaged that there will be a need to use any such safeguarded land during the Review period*" in the supporting text at paragraph 5.4.9.

Whether the Proposals should be considered favourably

130. The presumption in favour of development is established in this case for a number of reasons. The Council disputes the absence of a five year HLS. However, even if a five year HLS were acknowledged to exist, the paragraph 14 presumption still applies for reasons set out above.

Five Year HLS

131. The appellant considers that the issues for determination are the requirement figure (the step-up situation has been resolved by the CS), the buffer and, how to deal with the shortfall, and the housing supply figure, including identified supply categories A – E, windfalls / empties / prior approvals and PAS sites.

³⁴ CD17(b)

The HLS Requirement

132. All agree 70,000 dwellings over 16 years is the gross target. The issue of a step-up starting with 3,660 a year during 2012 – 2017 has been determined by the CS.
133. In terms of the buffer, the Council has used the 4,300 figure taken from the RSS as a 'target figure' in their AMRs.³⁵ It is a nonsense to deny the relevance of underperformance before 2012. To do so strips the buffer requirement of 5% or 20% in paragraph 47 of the Framework of all meaning.
134. The Council moved away from its original acceptance that a five year period was a reasonable period to look back. The five year period is consistent with the Cotswold decision of Lewis J³⁶. Over the last five years the under-delivery has been marked and persistent as the HBF submission demonstrates.³⁷
135. The Council suggested a longer period than five years which extends back to before the recession. However, when paragraph 47 of the Framework was written with its reference to persistent under-delivery, there was obvious knowledge of the recession and its effects. The recession cannot be a justification for omitting consideration of the appropriate buffer in paragraph 47.
136. Moreover, since the CS period started there have been two years of serious underperformance tested even against the lower stepped requirement of 3,660 dwellings.
137. The buffer is not a punishment; it simply brings housing forward from later in the plan. This is appropriate here in order to boost supply.
138. The buffer calculation does not involve a requirement for the Council to make up the 'lost' figures which predated the CS and this is as already agreed at page 6 of the SoCG on housing.
139. Finally, the Council says it cannot manage delivery of the buffer in the five year period. This is a special pleading for Leeds City Council in relation to national policy. The Framework applies on a countrywide basis. The Council calculated the next five years of supply as being, 3,829 dwellings; 4,500 dwellings; 5,664 dwellings; 7,089 dwellings; and, 6,739 dwellings supply totalling some 27,821 dwellings during the forthcoming five years. If Leeds' five year supply were correct, it could manage the higher rate, (20%) buffer which the appellant considers is the appropriate buffer based on performance over the last 5 years.
140. Turning to the shortfall, the PPG guidance at paragraph 3-035 is clear: the shortfall should be made up in five years failing which Leeds should ask adjoining authorities to assist. Moreover, all the recent appeal decisions point to a five year period in any event.
141. The appellant's conclusion is that the correct requirement figure should include the 20% buffer with the backlog made up in the first five years.

³⁵ CD40, CD42

³⁶APP A - Mark Johnson Appendix 2 paragraph 48

³⁷ APP A - Mark Johnson Appendix 1 Table

HLS – the Supply

142. There are five key categories of supply. The main issue with Category A ($9,949 - 6,500 = 3,449$) is the likelihood of delivery given concerns about viability and rate of delivery. There are two relevant documents: the DVS and the GVA material. It remains unclear what purpose the DVS material is intended to serve. Of the 15 'sample' sites, 4 (25% plus) were found to be unviable. What effect does this have on the rest of the sites? The Council denied that the 15 sites were samples but that cannot be true and is not what the DVS itself says.
143. By way of contrast, the GVA report is clear – all City Centre and Inner Area sites are regarded to be unviable for CIL purposes.
144. Without making viability disproportionately important in this case, it is clear that there are really deeply engrained problems with the Council's steadfast reliance on sites simply because they have planning permission. Footnote 11 of paragraph 47 of the Framework is not satisfied by simply pointing to the existence of a planning permission.
145. The approach to the HBF is not healthy and ignores the role that the PPG gives to the development industry. In the Elworth Hall Farm decision the Inspector highlighted that "... *paragraph 03-0020 of the National Planning Practice Guidance (Guidance) says that the advice of developers and local agents will be important in assessing lead-in-times and build-out rates by year.*"³⁸
146. Category B ($1,098 - 887 = 211$) shows little disagreement over allocated sites without planning permission.
147. Category C ($2,381 - 371 = 2,010$) reintroduces issues about delivery and viability. The permissions in this category lapsed for a reason.
148. Category D ($6,018 - 1,680 = 4,338$) provides for a very large debate which centres on whether sites will obtain planning permission and whether they will be developed in a timely manner thereafter. The Wainhomes case³⁹ at paragraphs 34 and 35 shows the degree of caution that should be shown before sites without planning permission are counted in the land supply. This is illustrated by the facts of this appeal. As a Policy N34 site which had passed muster at two development plan inquiries, the appeal site could easily have been included as a 'green' site in the Issues and Options. However, the fact is that it has not received planning permission and this illustrates the difficulties, especially where there is a level of local objection. The sites that the Council relies upon in its five year HLS calculation are very likely also to be subject to objection, so grant of planning permission cannot be regarded as a given.
149. Category E ($1,685 - 879 = 806$). The HBF has fairly acknowledged that some of the 2013 SHLAA sites will obtain planning permission within 5 years, but this does not mean all will do so.

³⁸ CD44

³⁹ APP A - Mark Johnson Appendix III

150. The overall difference – Categories A-E is $21,131 - 10,317 = 10,814$ which is a very large figure for disagreement.
151. In addition to the five key categories of supply there is the issue of windfalls. The test in paragraph 49 of the Framework has been applied to the 500 dwellings per year and therefore 2,500 needs to be added to the supply. That test of probability of continued supply has not been applied to the larger windfall sites or prior approvals.
152. The figure for empty homes coming back into use represents a difference of opinion as to the rate to which policy / funding will reduce empties and so provide homes. The Council's figure is, in the appellant's view, over-optimistic.
153. The sites with planning permission are agreed. Beyond that, there are difficulties with the Interim Housing Policy (IHP) approach in Policy N34 with the PAS sites.
154. The IHP policy on the Council's own account can have little weight afforded to it.⁴⁰ Furthermore, it was accepted that, if there were no five year HLS, it would have no effect at all.
155. The IHP can only have effect in so far as it is consistent with the Framework and it is not drafted in accordance with the Framework because it carries out no balancing exercise and treats proximity to a major settlement as determinative of grant of planning permission; this conflicts with the fuller balance that paragraph 14 requires. The IHP also ignores the sustainability assessment of the site that the UDP and UDPR processes carried out.
156. The PAS sites accepted by IHP have changed and are reduced from 689 dwellings to 619 dwellings which reflects the reduction of 70 dwellings on the Cookridge site. Moreover, Spofforth Hill has a capacity based on 40 dwellings per hectare according to the developer's information so that the Leeds figure for this site represents an over-estimation.
157. At the Inquiry the appellant concluded on the five year HLS that the correct calculation was a 30,801 requirement with a 14,964 supply resulting in a 2.4 year supply. The appellant has acknowledged the post CS Report information from the Council. It is not disputed that the base requirement is 20,380. The appellant considers the backlog (to be achieved in the five year period) should then be added and after that a 20% buffer added to that sum. As such, the requirement far exceeds the supply which the appellant considers is available.

Prematurity

158. The development process is set out above. The UDPR did not expect the Policy N34 sites to be released before the further UDP Review but that review process has now been overtaken by the new two part process of the CS and the SAP DPD. The CS is about to be adopted with a commitment to provision of 70,000 homes in the period 2012-2028. The fact that the CS plan period is already two years old is highly relevant to the issue of whether land needs to be released now.

⁴⁰ CD28 paragraph 54

159. It has been accepted that release of the appeal site now was not alleged to be premature in terms of the CS process and, if there is no 5 year HLS, the release of the site would accord with policy N34 of the UDPR. To argue otherwise is to ignore the need to deliver 70,000 homes in the 16 year plan period. The acknowledgment that a 5 year deficit would justify release of the policy N34 sites means that the case on prematurity makes no sense. Until the SAP DPD is adopted, the relevant part of the development plan which supports the CS is the UDPR. It is nonsensical to allege that a development which is needed because of a 5 year deficit, and which accords with Policy N34 of the UDPR which forms part of the development plan could be regarded as premature.
160. The Council's case on prematurity is that the appeal is premature in relation to the SAP DPD and the Neighbourhood Plans.
161. Paragraph 216 of the Framework is the first reference point for guidance on matters of prematurity. Based on the AMR / LDS it is clear that the SAP DPD has far to go. The Council has not even finalised its own strategy, with the 'Issues and Options' stage being no more than initial thoughts which can be subject to change. The Secretary of State's decision in Tewkesbury establishes that little weight can be afforded to plans which have not yet been subject to examination⁴¹. The site allocations have not even been put on deposit, still less examined.
162. The SAP Issues and Options proposed release of one green belt site with a 'green' status (namely Site 16 Land North of Keswick Lane).⁴² It is inconsistent with paragraphs 14 and 83 of the Framework to consider green belt sites for development in advance of a site which was removed from the green belt to avoid the necessity for future green belt release such as the appeal site which was identified through the Policy N34 process. It also conflicts with CS Spatial Policy 6(iii).
163. Furthermore, two green belt sites⁴³ in Wetherby are given the same 'amber' status as the appeal site which again ignores policy N34 which was intended to stress the permanence of the green belt boundaries. This importance of permanence of green belt boundaries and avoiding unnecessary use of green belt land for development is repeated in the Framework at paragraphs 14 and 83.
164. When the PPG is considered, the reason for refusal based on prematurity becomes completely unarguable. To refuse planning permission on the basis of prematurity still requires the Council to demonstrate that 'exceptional circumstances' justify this course of action. There are no 'exceptional circumstances' in this case. In addition to this, it would be necessary to demonstrate that the proposal is 'so substantial' that the proposal would 'undermine the plan making process' and the emerging plan should be at an 'advanced stage' but not yet adopted so that "*refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination...*"⁴⁴

⁴¹ APP B - David Rolinson Appendix DMR/APP/11 see paragraphs 59-65

⁴² CD8(b) page 13

⁴³ Sites 41 and 42 CD8(b) page 19

⁴⁴ CD34

165. The SAP DPD will not be submitted for examination until next 2015 so that in the usual run of events it would be wrong to refuse this proposal on the basis of prematurity.
166. The Issues and Options document itself emphasises the fact that Leeds accepts it may not have got the choices right. It states "At this stage we are seeking views as to whether we have got the colour coding right and which are the most suitable sites."⁴⁵
167. The Council's position that refusal in this case would be one of those rare cases where it would be justified has relied on the comparative sustainability assessment of all sites that the SAP process enables and the engagement of local people in that process. There is, in the appellant's view, nothing in either point.
168. The comparative sustainability of this site was assessed against the whole of the Leeds area in both the UDP and UDPR Inquiries. As stated above, one of the express requirements in PPG2 Annex B was that the site should be sustainable. The concept of sustainability was alive and well when PPG2 was written (which makes express reference to Planning Policy Guidance 13: Transport).
169. The Council's case has also involved a misinterpretation of sustainability, equating it simply to travel accessibility. This wrongly treats sustainability as a single issue rather than the multi-faceted concept that it is. There are regular bus services from Boston Spa to the major towns – apparently better than at the time of the UDP which referred to the services being 1.2 km away. If Boston Spa were a non-sustainable location, then the Church Fields appeal would have been rejected. It was not and that development involved more homes. In its wider sense this proposal is sustainable because it helps to sustain existing services in Boston Spa.
170. The criticism that local people will be excluded from the SAP process chooses to ignore their involvement in the UDP and UDPR Inquiries. The public's involvement in the SAP process has been to make objections to it which are now being considered by the Council as local planning authority. Although Boston Spa Parish Council objects to the appeal site there are many other people resident in the Outer NE area who may take a different view as to the acceptability of development in Boston Spa instead of locations near to them. Even if a new settlement in the green belt at Spen Common Lane, Bramham⁴⁶ met with universal local acclaim it will still have important green belt hoops to negotiate before it can be included in the SAP DPD.
171. The prematurity debate cannot ignore the present five year HLS position. Clearly, if there is no five year HLS then there is still less justification for refusal based on prematurity. The passages of Males J's judgment in the Tewkesbury case are instructive on this issue "*49 ... the inspector and the Secretary of State were entitled to conclude that (1) the existing pre-PCPA 2004 development plan was outdated and therefore of very little weight; (2) the need for a five year housing supply was a material (and in fact the most important material) consideration; (3) Tewkesbury was unable to demonstrate such a supply in this*

⁴⁵ CD8(b) page 24 paragraph 6.3.6 last 3 lines

⁴⁶ CD 8(b) page 22 site 58

case; (4) accordingly a presumption in favour of granting permission applied; (5) the emerging JCS was of little weight because it was at a very early stage; (6) in any event the proposals in the JCS were incapable of meeting the demand for housing during the next five years; (7) granting permission would not prejudice the JCS process; (8) there was therefore no basis to refuse permission on the ground of prematurity or otherwise because of the JCS; and (9) overall, the balance came down in favour of granting permission. Each of these conclusions was the result of applying well established principles and policies to the evidence before the inspector and was a legitimate exercise of planning judgment..."

172. That judgement continues "*69. Since Mr Leigh does not contend for a bright line rule whereby in all circumstances the views of the local authority must prevail, it must follow that his essential case is (and can be no more than) in some (undefined) circumstances the views of the local authority (albeit not yet embodied in an adopted local plan) are entitled to greater weight than other material considerations such as the need for a five-year housing supply (or, in effect, that the prematurity principle should now apply in circumstances where previously it would not have done). But quite apart from the fact that no such conclusion can be drawn from the generalised policy statements on which he relies, such a case would amount, apparently for the first time in English planning law, to laying down as a rule of law a requirement as to the weight to be given to the views of the local authority rather than leaving such matters to the planning judgment of the Secretary of State or his inspector. This would contradict with what Lord Hoffmann described as a fundamental principle of planning law. The Localism Act contains nothing which could be regarded as enacting such a radical change and in my judgment it is inconceivable that any such change was intended to be brought about by the policy statements which accompanied the Act.*"⁴⁷
173. It will be remembered that the Tewkesbury appeals involved release at appeal of a total of 1,000 homes in advance of the Joint Core Strategy Examination.
174. Turning to the issue of neighbourhood plans, there is no force whatsoever in a case that the proposal is premature in respect of the Neighbourhood Plans of Boston Spa and Clifford because they have barely started their processes and are far from being ready for examination and until the SAP DPD is adopted in 2016, the Neighbourhood Plan at Clifford cannot propose anything on the appeal site which would prejudice the site's role as a safeguarded site pursuant to Policy N34 as to do so would conflict with the UDPR.
175. The Council's case to justify refusal based on prematurity is without any policy foundation and ignores the urgent need to identify land both to remedy the five year HLS deficit and to start delivering the 70,000 homes that the CS is promoting.

Sustainability

176. The Framework confirms that sustainability is predicated upon economic, social and environmental roles, not just accessibility. The appeal proposal provides economic progress through increased support for shops and services;

⁴⁷ APP B - David Rolinson Appendix DMR/APP/11

construction jobs; and delivery of the New Homes Bonus. In social terms, it contributes through meeting housing needs including delivery of much needed affordable housing, as well as benefits to the Hospice. In environmental terms it facilitates the retention and management of environmental assets as well as energy efficient housing delivery with Code 4 housing.

177. It was accepted by the Council that the appeal site is in reasonable walking distances to the centre of Boston Spa and that Boston Spa has a good range of retail, education and community facilities. Boston Spa is one of the larger 'Smaller Settlements' which need to accommodate 11% of the housing requirement (Spatial Policy 6) with the Outer NE area required to accommodate 5000 houses (8% of the total requirement). Beyond Wetherby, which is a 'Major Settlement', Boston Spa is the next logical location for housing development as it contains the best service base of all the 'Smaller Towns' within the Outer NE area and, indeed, is the only 'Higher Order Local Centre' within the Outer NE area.
178. The UDPR allocated Church Fields as a housing site and retained PAS sites in accord with its policy strategy (2006). Since that time, the Church Fields decision (March 2011) confirmed Boston Spa as a place for development with moderate public transport and reasonable proximity to significant sources of employment⁴⁸. The CS background paper – April 2013⁴⁹ confirmed good availability of facilities and the appellant's evidence⁵⁰ confirmed accessibility to facilities within and beyond the settlement. Adequate choice exists for residents of Boston Spa to access employment opportunities at Thorp Arch Employment area (by bus, walking and cycling), at Wetherby (by bus and cycle) and at other centres such as Leeds and Harrogate (by bus). Wetherby has a range of retail facilities accessed by a regular bus service.
179. There is no need for a comparative sustainability assessment of the appeal proposals in decision taking as there is a presumption in favour of sustainable development for the appeal site. Irrespective of this, a comparative assessment has been done in sustainability assessment for the SAP Options and Issues DPD and the appeal site fares well.

Highway Safety

180. The statement of common ground shows that the Highway Authority has no problem with the scheme. The adjacent roads and the traffic / parking on them was known to the UDP / UDPR Inspectors when they examined the site for potential development. There has been no expert evidence submitted to contradict this.

Services and Facilities

181. Boston Spa has a good existing service base but further support is needed for this retail base with further local expenditure. In terms of education, Boston Spa has the most schools of any 'Smaller Settlement'; the Secondary school has capacity to accommodate pupils; and whilst Primary schools are at capacity, the

⁴⁸ APP B -David Rolinson Appendix DMR/APP/08

⁴⁹ APP B - David Rolinson Appendix DMR/APP/09

⁵⁰ APP C -David Sagstad

Parish Council provided written evidence that Primrose Lane Primary school has sufficient grounds to expand. The s.106 Agreement would deliver £495,437 to fund these improvements. Boston Spa also contains a medical facility, that being a General Practice Surgery, with some limited capacity. There is a general sufficiency of green space⁵¹ within Boston Spa and, where deficiencies exist, it looks to new residential development to deliver green space improvements. The appeal site can deliver new public open space which will be accessible for all residents of Boston Spa. There are therefore no infrastructure deficits for the appeal proposals that cannot be addressed through the s.106.

Character and Appearance

182. All matters are reserved other than access and it is agreed that there is no reason to doubt that a reserved matters scheme could come forward which would preserve and/or enhance the adjacent Boston Spa Conservation Area.
183. The new Church Fields development shows that contemporary housing does not need to be unattractive. The setting of that development adjacent to the village church is even more sensitive.

Relationship with the Hospice

184. The appellant recognises the sensitivity of developing next to a hospice. The appellant has a good track record of development in close proximity to hospices including recently with Wakefield Hospice. The appellant has engaged positively with Martin House Hospice and are delivering a new car park for the Hospice to address any peak time parking issues. The full application shows that a scheme can reinforce the boundary with the Hospice through trees and boundary treatment; deliver a 23-30m stand-off distance; and maintain the area in between as privately managed (not public) open space. The Martin House Hospice has confirmed in their letter of 28th August 2013 that the appellant has minimised their concerns.

Appellant's Overall Conclusions

185. This is a proposal where the advantages of development very greatly outweigh the disadvantages. Therefore approval of the scheme is sought.

Post Inquiry Additional Matters

186. The appellant did not opt to submit any significant additional information but notes that there is no justification for re-opening a debate that was largely concluded at the Inquiry. It comments that it is inevitable that five year HLS cases will see a change in circumstances over a period of time and nothing is exceptional here.
187. The appellant considers that the latest household projections do not affect their case, because they are only one component in establishing a housing requirement. Rather they are trend based and do not attempt to predict the impact that future Government policies, changing economic circumstances or other factors have on demographic behaviour.

⁵¹ CD8(b) paragraph 6.5.7

188. In terms of the Bagley Lane, Farsley, appeal which the Council refers to, the appellant points out that this sets out that the development plan is the "indisputable basis for determining appeals" and that decision post-dated the new household projections. However, the appellant points out that the 2,000 dwelling surplus identified in that case can no longer exist because, from the following month (April 2015) the step-up would have reduced that surplus by 1,040 dwellings (the required delivery having gone up to 4,700 dwellings) and the delivery rate for 2014-2015 was unlikely to achieve the 3,660 requirement given that the first 3 quarters of 2014-2015 had only delivered 1,417 dwellings. On the basis of that figure if the gross average of 472 dwellings is multiplied to predict the full year build rate, the appellant concludes, this would result in total erosion of any remaining buffer that had been set out in the Bagley Lane case.
189. Because there is no 5 year housing land supply the appellant argues that the policies of the Leeds Core Strategy and UDPR (including policy N34) are out of date such that paragraph 14 of the Framework is engaged. Moreover, the Interim Policy which formed part of the first reason for refusal has been withdrawn and the locational criteria set out in the exceptional criteria no longer applies and cannot be counted against the scheme.
190. As part of the same document which withdrew the Interim Policy, the Outer NE area in which the appeal site is located was considered. However, the appellant considers it is clear that there remain options to be discussed so there is still no preferred option for the location of housing in this area. Thorp Arch is also presented in that document as a potential mixed use site with employment and residential use which runs counter to the residential use put forward at this (Boston Spa) appeal.
191. Paragraph 216 of the Framework explains that greater weight can be given the more advanced a plan is, but in this case the Site Allocations Plan is not at an advanced stage as indicated by the lack of decision on Thorp Arch (and the potential release of Green Belt land at Headly Hall). As such, the only policy to which weight can be attached is UDPR policy N34 which the appellant has already explained should not be afforded weight because there is no five year housing land supply and the policy is not fully consistent with the Framework. Thus, paragraph 14 of the Framework should apply and permission be granted given the site is in a sustainable location and 35% affordable housing would be provided along with other benefits already identified.
192. It is noted that the Bagley Lane, Farsley, appeal is now the subject of a High Court Challenge.

Others Appearing at the Inquiry

193. David Thomson and Brian Charlton made representations on behalf of Boston Spa Parish Council. The key points they made were that the site is not accessible because of inadequate public transport. The reliance on private transport for future occupiers means that the site would not be sustainable and this would not accord with the Framework. The Transport Assessment is out of date and not well judged and the walking times are not a fair reflection of real walking times. The bus service is not easily accessible, sufficiently frequent and does not operate at suitable times for commuters.

194. The City Council has been accused of failing to provide housing but it does build homes. The market is largely led by mortgage companies. Whilst Church Fields has been developed with 153 dwellings only 40 have been sold. Mortgage provision is slowing down so developing at Grove Road would therefore be counter-productive.
195. Whilst an Inspector took this site out of the green belt they acknowledged it was not ideal in respect of proximity to Martin House Hospice. Developing a hundred homes here will not be key to Leeds' success. It would be better to respect Martin House.
196. The Parish Council has discussed this site and recommends that a return to green belt is sought.
197. Cllr Proctor explained that whilst many may not like housing allocations near them, enough sites have been identified through the SHLAA and Leeds has demonstrated its intention to act to provide housing. In particular he drew attention to the sites at Thorp Arch and Bramham. As such this site is not needed.
198. The appeal site does not have good access to meaningful public transport, there are limited shopping facilities, the local schools are full and the s.106 money cannot resolve this. He understands that the Church Fields site should be providing £400,000 for education but that this has been used for routine maintenance, not extra capacity.
199. The Martin House Hospice is an excellent facility supported by the whole of Leeds and yet the scheme would be disadvantageous to it.
200. Cllr Proctor repeated the points made by the Council about the HBF role and that volume house builders are not involved in the City Centre so have limited knowledge, reducing the value of their contribution to the SHLAA process. Moreover, build out rates have been greater than some builders would like to accept. As such there is no doubt in his mind that there is a five year deliverable HLS. Importantly, the economy is improving and Leeds City Council, as well as the house builders, is doing well in delivering housing. The Council's Plan Panel are seeking more residential schemes with a variety of tenures. Financing through financial institutions is also picking up, with institutions approaching the Council to discuss infrastructure and where to place funds. Essentially it is a case of who to believe on five year supply. Here the developers are waiting to jump the gun on the allocations process which should take place through the SAP DPD. It is important that development should be about localism and about choices.
201. Pippa Sterne expressed particular concern regarding the relationship to the hospice and the suitability of the proximity. Sarah Pim, also a local resident, expressed concern regarding the impact on highway safety of additional traffic from the proposed development on the smaller, winding, roads which get used by agricultural traffic as well as walkers and cyclists.

Written Representations

Application Stage

202. The written representations from local residents and interested parties at the application stage are recorded in the Council's City Plans Panel Report dated 16 January 2014⁵². This identifies 190 objection letters which, broadly, object to the loss of green land, including the erosion of the space between Boston Spa and Clifford; prematurity in terms of the CS and neighbourhood plans; no need for new housing as significant new housing has already taken place nearby; adverse impacts on the adjoining hospice; impact on local infrastructure (school, medical services etc); impact on village character; poor low cost design with high density; drainage issues; highways concerns including parking, walking to school routes and lack of public transport with associated sustainability issues; impact on the environment and wildlife; noise; failure to reflect localism.
203. Boston Spa and Clifford (within which the site lies) Parish Councils both objected to the scheme. Their views reflect those of the local residents and interested parties, as did the objection from the Boston Spa Neighbourhood Plan Steering Group.
204. Whilst Martin House Children's Hospice would rather see the site remain undeveloped, they welcome the additional parking provision and the planting between the development and the hospice. They seek assurance regarding no-dig conditions to protect trees, express concern about two plots (this consultation also related to a full application but as this is an outline application that comment does not have significance) and seek appropriate boundary treatment.
205. Statutory consultee responses are also recorded in the same report. Highways and Environment Agency responses are accounted for in the Other Agreed Matters set out above.

Written Responses to the Appeal

206. Four letters of objection were received in response to the appeal and a holding letter was submitted by Boston Spa Parish Council. The four letters of objection cover similar matters to those raised at the application stage, particularly focusing on highway safety, drainage, infrastructure/services and loss of green space. In addition, concerns are raised that there are more suitable sites and that the offer of a car park for the hospice should not cloud the decision.

Inspector's Conclusions

The numbers in square brackets [] refer back to earlier paragraphs of this report.

Development Plan Policy

207. The development plan includes the recently adopted Core Strategy (CS) along with some remaining saved policies from earlier development plan documents. These include some policies from the Leeds Unitary Development Plan Review 2006 (UDPR). UDPR policy N34 is a saved policy which relates to Protected

⁵² CD12

Areas of Search for Long Term Development (PAS sites). The appeal site is a PAS site and policy N34 sets out that, in such areas, 'development will be restricted to that which is necessary for the operation of existing uses together with such temporary uses as would not prejudice the possibility of long term development'. [5, 12, 56-58, 124]

208. The supporting text to the policy explains that, to ensure the long term endurance of the green belt, PAS sites have been identified to provide for longer term development. It also states that "*Given the emphasis in the UDP on providing for new development within urban areas it is not currently envisaged that there will be a need to use any such safeguarded land during the Review period*⁵³. *However, it is retained both to maintain the permanence of green belt boundaries and to provide some flexibility for the City's long-term development.*" It goes on to explain that PAS sites will be reviewed as part of the Local Development Framework (LDF) process.
209. The appellant takes the view that UDPR policy N34, despite being a saved policy which fits between the UDP and the Core Strategy, is out of date. This is because the Interim Policy (which no longer applies) allowed policy N34 sites meeting certain criteria to be developed. The approach of the Council appears a pragmatic one, in which it acknowledges that it needed to release sites beyond those in the UDPR and in advance of the Core Strategy, and sought to do so in a controlled way using the Interim Policy. However, that approach indicates that policy N34 and, thus, the provision of housing land within the UDPR were out of date. Indeed the formation of the Interim Policy followed a number of appeal decisions and appears to have attempted to resolve inadequacy in housing land supply. That situation has changed in that the Interim Policy has now been withdrawn. However, this does not resolve the fact that policy N34 had, in effect, been acknowledged to be out of date. Whilst policy N34 must be taken into account, the fact that it is out of date clearly has implications for the application of paragraph 14 of the Framework which requires for decision taking that *where relevant policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework when taken as a whole*. However, simply because there is no SAP DPD showing the location of the whole housing requirement (70,000 dwellings) does not make the UDPR out of date, rather it reflects the evolving nature of development plan process; what it does is to reinforce and make more apparent the need for a five year housing land supply to feed into the development plan as it evolves, the importance of which is clearly set out in Framework. [3, 26, 55-60, 77, 116-124]
210. It also adds significance to the issue of prematurity pending the Core Strategy SAP DPD. In this case, the SAP DPD is not imminent with the Issues and Options still undecided. Allowing new housing on sites that are not allocated for such use is likely to have some implications for the location of housing in the Authority as a whole, including potentially having implications for establishing site allocations. As such, it is considered by those opposing the appeal scheme that allowing this appeal would be premature in advance of the SAP DPD. However, I do not consider that the development proposed in this case is so substantial, or its cumulative impact so significant, that granting planning permission would

⁵³ The Selective Review of 2003-4 extended the UDP to 2016

undermine the plan-making process in terms of the scale, location or phasing of housing in the emerging DPD. [120-121,158-165, 202]

211. At the Inquiry it was agreed that the housing requirement established in the then emerging Core Strategy, which has now been adopted, provides the correct figure on which to base housing requirements for the purposes of this appeal. Despite the new 2012 based household projections both main parties agree that the critical requirement figure should be based on the adopted Core Strategy figures. For the plan period 2012-2028, the housing requirement is 70,000 dwellings. However, the Site Allocations Development Plan Document (SAP DPD) is at a very early stage and so, whilst the number of homes required has been identified, there is no accompanying planning document identifying where that housing should be located. Moreover, there is continuing uncertainty regarding the Outer NE area and the potential use of Thorp Arch and Headly Hall sites. As such, the likelihood of those sites coming forward for housing is a matter to which I can only attach marginal weight. [69, 120-121, 191]

National Planning Policy

212. The National Planning Policy Framework (the Framework) makes it clear that housing applications should be considered in the context of the presumption in favour of sustainable development. It also sets out that 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 sites⁵⁴ .
213. Paragraph 14 of the Framework seeks prompt approval of proposals that accord with the development plan and, where the development plan policies are out-of-date, seeks granting of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. [57-58, 123, 130]
214. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
215. In this case, given the above national policy basis and that the local policy situation is changing, with a new CS, it is necessary to consider whether, on the evidence put to the Inquiry, there is a five year supply of deliverable housing sites.

The Housing Requirement

216. As set out above the housing requirement for 2012-2028 is 70,000 new dwellings. The original modifications to the CS did not allow for a step-up approach to the provision of the overall housing requirement and simply sought 4,375 dwellings per annum. However, the Council pursued this matter and the

⁵⁴ Paragraph 49

CS Inspector indicated, coinciding with the end of this Inquiry's sitting period, he would allow a stepped approach. That modification has been made and confirmed within the Leeds Core Strategy Inspector's Report and now forms part of the CS. This means that in the first five years of the plan period (2012-2017) a minimum of 3,660 dwellings are required with the residual sum spread over the remaining plan period. The Council calculates, and it is not disputed, that this means at base level (i.e. without any other shortfall) 4,700 dwellings will be required in years from 2017/18 onwards. [36]

217. Nevertheless, the plan period has commenced and it is agreed between the Council and the appellant that there is already a shortfall of delivery (i.e. undersupply) against the housing requirement even at the reduced stepped rate. [33]

218. The issue of when any undersupply should be made up is commented on in the national Planning Practice Guidance (PPG) which advises that where an undersupply has occurred, as is known to be the case here, *local planning authorities should aim to deal with that undersupply within the first five years of the plan period where possible*. Where this cannot be met in the first five years, *local planning authorities will need to work with neighbouring authorities under the duty to co-operate*⁵⁵. It is acknowledged that the Council has not been working with neighbouring authorities in this way on this matter, which reflects the Council's belief that it can provide an adequate housing land supply. That being the case, it seems reasonable to expect the Council to accommodate the undersupply within the next five years. Moreover, this approach seems essential given the housing requirement is recently established, was established during a period of recession and so is not inflated, and relates to people needing homes. [140]

219. Although the Council suggests making up shortfalls within five years would negate the benefit of a stepped approach to the housing requirement, I disagree. The step-up has eased pressure on the Council in the initial years of the plan in the interests of proper planned development, but that does not justify further falling behind given the identified housing need established in a recently adopted CS. [69, 78]

220. The extent of the actual net supply for 2012-2014, has been amended from the initial statement of common ground and the parties agree that the backlog against the agreed requirement based on the step-up approach requirement for 3,660 dwelling in each of those years amounts to some 2,363. That sum, for the reasons set out above, should be made up in the next five years. This would bring the 5 year requirement to 3x 3,660 plus 2x 4,700 plus 2,363; a total of 22,743 dwellings.

The Housing Supply Buffer

221. In addition, the Framework supported by the PPG, makes it plain that, to ensure choice and competition in the market for land, local planning authorities should provide a buffer to the supply of deliverable sites for the five year period. That additional buffer should be moved forward from later in the plan period and

⁵⁵ The sections in italics are taken from the planning practice guidance at paragraph ID 3-03-035-20140306 Doc 17

ordinarily should represent an additional 5% of the supply required. However, if the evidence shows that the Council has persistently under-delivered housing, in order to improve the chances of the Council meeting its housing requirement it would be necessary for it to be able to identify specifically deliverable land for a six years' supply of housing (that is the five year requirement plus a 20% buffer) in accordance with Framework paragraph 47. This would not change the housing requirement figure but it would change the housing land supply figure. [107, 131, 141, 157]

222. The analysis of whether or not there has been persistent under delivery requires looking back. The Council suggests looking back should not go beyond 2012 because the figures before then are not robust. The two years since 2012 have failed to deliver the housing requirement. However, I also accept the Council's view that two years under delivery cannot reasonably be considered an adequate time span to conclude there has been 'persistent' under delivery. Thus, despite the Council's view, it is necessary to look further back. [68-77, 133-141]

223. The only requirement produced at the Inquiry against which delivery rates can be assessed is the former Regional Spatial Strategy (RSS). This has no weight as a policy document but remains of some relevance as it provided the previous basis for housing requirements. The weight to be attached to this source of housing requirement figures is limited for reasons set out later. Even so, it is the only source of this type before me; it established a requirement of 2,260 dwellings between 2004/5 and 2007/8 and then from 2008/9 to 2012/13 the requirement was 4,300 dwellings. Against the requirement of 30,540 dwellings delivery was 24,278. At a basic level, there is no dispute that there was a failure to achieve the RSS housing requirements. This is a matter also recorded by my colleagues in various appeal decisions which were submitted to the Inquiry.

224. I acknowledge that the population projections, which formed the basis for the RSS, did not occur as predicted, with lower levels of population increase, and so the assumptions which formed the basis for the RSS housing target did not become reality. I also acknowledge that the CS Inspector explains this "*significantly reduces the weight to be attributed to under delivery against the Regional Spatial Strategy target and the need to address any shortfall against the Regional Strategy through the Core Strategy*". However, it seems to me this finding is about whether any historic back-log should be applied rather than the buffer. I also note he accepts that "*there is some merit...to the argument that in migration will be affected by the supply of housing*" although he acknowledges that such a situation is unlikely to be all as a result of housing delivery being lower than prescribed by the RSS. Although not directly related to the buffer situation, it is worthy of note that there is agreement between the main parties that there is no need to make up the undersupply from the RSS because that document no longer has force and the CS establishes new housing requirements. [109]

225. It is only right to look back over a reasonable period, and I note the PPG seeks consideration of periods of 'peak and trough'⁵⁶. Whilst the Council considers that the RSS base should not be used as a base for comparison, it was the base to which it should have been working at that time. The Council failed to meet the

⁵⁶ Guidance para 035 Reference ID 3:035-20140306

RSS targets and could only retrospectively relate that failure to the population situation with the benefit of hindsight. As noted above, the Core Strategy Inspector acknowledged that the lack of housing may itself have had implications for the population statistics albeit only part of a bigger picture. Thus, I consider that it is appropriate to look at those targets albeit to temper any assessment in the knowledge of the subsequent population statistics. [69-75, 133]

226. Looking at the RSS figures on a yearly basis, as noted by the Council, the housing targets were being met in the period 2004/5 to 2007/8. However, this was at a point where targets were reduced to allow a step-up as well as being during a boom period. Thus, even accepting that the recession hit Leeds particularly hard, it is not surprising that the housing targets were being met in the earlier part of the millennium. However, overall, the failure to meet the RSS targets was not by a modest amount and the undersupply has contributed to the current situation where significant amounts of additional housing are now necessary despite the population predictions of the past falling short. Indeed, the Council acknowledges it has an unusually high housing requirement particularly given its location away from the pressurised south-east. As such, the failure to meet housing requirements of the RSS, whilst understandable to a certain degree, in my view contributes to persistent under-delivery.
227. The Council claims that adding a higher (20%) buffer would be double counting as the new targets include for unmet need. However, I do not agree because the buffer is simply drawing forward land availability and does not alter the requirement for housing in the five year period, as I have already explained above. [69]
228. Since the Grimes Dyke decision the Council has taken action to release greenfield land to the housing market. Sites set out in the Unitary Development Plan were released 'early' (greenfield land for some 7,000 dwellings) and since then as part of the Leeds Interim Policy 2013 selective release has taken place for some of the Protected Area of Search (PAS) sites. A significant number of sites have therefore been released. Those sites may have seen a slow take up rate by developers. However, apportioning responsibility for the lack of development is not helpful; what matters is that the adequacy of housing land availability provides for choice and competition so that there is a higher prospect of the necessary number of houses being built. [77]
229. It is also important to acknowledge that the buffer is not intended to be punitive; rather its purpose is to support the wider Framework objective of boosting significantly the supply of housing. Whilst Leeds is the focus of significant housing growth, this simply reflects need. [76]
230. Taking all the factors before me into account, I conclude that undersupply has been persistent and is continuing to be so with a failure to meet the stepped targets for the first two years of the recently adopted CS and, thus, find that a 20% buffer is necessary in this case.
231. In coming to that view, I am aware that the Council considers that this, in part, would devalue the benefit derived from convincing the CS Inspector to allow a step-up in housing provision at the current time. However, I disagree as, had he not done so, the 20% buffer on the supply side which is necessary would have been applied to a greater basic requirement. I also note that the Council is concerned that the deliverability of a larger number of dwellings is beyond their

reach and so would have an impact on proper planning. This is a matter best addressed when looking at the issues of supply and prematurity. [80]

232. There are also differing views about the figure to which the buffer, whether 5% or 20%, should be applied. The Council takes the view that the buffer should apply to the baseline requirement for a given five year period, whilst the appellant considers it should apply to the actual aggregated requirement for any five year period and thus should include any shortfall to be added to the five year baseline requirement.

233. Neither party could find any guidance to support their view. There is justification for applying the requirement to the actual aggregated requirement (this representing the present five year need), to do otherwise would underplay the significance of the backlog. It is important to appreciate that the buffer is, in effect, housing made available from future required provision and its purpose is to provide choice and competition to increase the likelihood of that housing provision coming to fruition. I therefore consider that the 20% should apply to the housing land supply figure necessary to meet the 'current' five year period. On this basis an additional 4,549 dwellings need to be added as a buffer.

234. As a consequence the Authority needs to be able to identify a supply of land sufficient for 27,292 dwellings (*five year basic requirement of 20,380 plus undersupply of 2,363 plus 20% buffer of 4,549*).

Housing Supply

235. The Council claimed at the Inquiry to have a housing land supply (HLS) of some 27,822 dwellings⁵⁷ for the current 5 year period and considers it has an adequate five year HLS in terms of the requirements it considers the Framework makes. The Council has also offered an update to that position indicating that it believes this figure is now greater, a matter to which I shall turn later.

236. There is no specific formula for calculating HLS. However, it is clear from the Framework that "*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*".⁵⁸

237. The Strategic Housing Land Availability Assessment (SHLAA) is a key source of information in terms of the Council's assessment of HLS. The Council's updated position records that an updated SHLAA was approved for publication by the Council on 17 June 2014 and sets a supply of 22,503 dwellings (at the Inquiry it was some 21,131 dwellings based on the previous SHLAA of 2012). However, the House Builders Federation (HBF) review of the SHLAA as provided at the Inquiry i.e. before the June publication, envisages a significantly different supply level, at less than half of that envisaged by the Council (10,317 dwellings). [83-86]

238. The Housing SoCG breaks the supply down into five key categories of housing land supply as well as supplementary additions. Sites with planning permission

⁵⁷ As set out in the Housing SoCG (the appellant's Closing Statement indicates this being revised down by a unit and I note that since this date the Council has updated the SHLAA)

⁵⁸ Paragraph 47, footnote 11

(Category A) are calculated at some 9,949 dwellings by the Council. In terms of these sites I acknowledge that the Framework indicates that they should be considered deliverable until permission expires unless there is clear evidence that they will not be implemented within five years; the example of clear evidence against inclusion of such a site is where it is evident that it would not be viable. The PPG to accompany the Framework also expresses caution in terms of availability, noting that the existence of a planning permission does not make a site available⁵⁹. [103, 142-150]

239. The HBF considers housing from this source is likely to be in the region of 6,500 dwellings, a significant difference of 3,449 dwellings below the Council's figure. The main reason for that divergence relates to concerns regarding viability and deliverability.
240. In seeking to address the issue of viability the Council sought that the District Valuer Service (DVS) consider the viability of 15 sites⁶⁰. The basis of the selection of those sites is not entirely clear but, whether or not those sites form a representative sample, what is clear is that the DVS considers 4 of those sites are not viable and would not be so even if there is no affordable housing provision made within them.
241. Moreover, it seems that contingency costs are tight at 3% although the sites have had abnormal costs assumptions made. Land values appear to be put in at modest levels when compared to those used by the Council in other work⁶¹ (increasing site viability on paper but likely to reduce attractiveness for landowners to sell) although those levels are, with exception of the greenfield sites, based on current use value plus an incentive based on a 20% uplift and therefore are reasonable. The developer profit is based on 16-17% which is a blended profit reflecting 17.5% on revenue to market value homes and 5% as contractor's margin on affordable dwellings. However, given the developer risks from potential difficulties with some of these sites, particularly the previously developed urban sites (only 3 are identified as greenfield) this is relatively restrained.
242. Thus, some of the assessment considerations are likely to give positive viability outcomes that are rather generous. Aside from that matter, the 4 unviable sites form a significant proportion of the sites assessed and so casts considerable doubt on the Council's assessment that the SHLAA identified sites can all contribute to the five year housing land supply, although I note only one of the sites assessed as unviable is included within the five year supply. Even so, that site, adjacent to St Hilda's Church on Knowsthorpe Crescent, Richmond Hill, would provide 86 units and despite it possibly becoming viable at the end of the five year period it would not be built out in it. [100]
243. I appreciate that the report by GVA⁶² in relation to Community Infrastructure Levy (CIL) charging has a different purpose from a document identifying land for housing land supply purposes. I also acknowledge that not paying a CIL tariff on a difficult site might assist in bringing forward that site, simply because not

⁵⁹ Paragraph 020 ref- 03-020-20140306

⁶⁰ Doc 4 / Core Doc 49

⁶¹ E.g. the GVA report set out in the footnote below

⁶² The Leeds Community Infrastructure Levy – Economic Viability Study January 2013

paying CIL will be a factor in site development economics. However, the fact that all City Centre and Inner Area sites are considered to be unviable for CIL purposes reinforces significant doubts about the genuine viability of housing sites identified as forming part of the five year HLS. Having in mind the advice of the Framework in terms of viability I am not satisfied that simply because these sites have planning permission they can all be considered as suitable for inclusion within the five year HLS. [93, 142-144]

244. Whilst the Council appears to consider the HBF to be unreasonably pessimistic, given the DVS report and the GVA document, it seems the Council's view is overly optimistic. Thus, a realistic supply from sites with planning permission is likely to be well below that claimed by the Council even if above that of the HBF.
245. Allocated sites without planning permission (Category B) are identified by the Council as providing some 1,098 dwellings, whereas the HBF suggest some 887 dwellings. The difference in this category is relatively modest. [146]
246. Greater divergence arises for sites with expired permission (Category C). The Council suggests this amounts to some 2,381 dwellings. However, the HBF suggests that only some 371 dwellings are likely to be deliverable. The Framework advice at footnote 11 implies a cautious approach should be taken towards sites with lapsed permissions (it certainly does not seek their inclusion in the same manner as sites with extant permission). There will be reasons why the planning permission has lapsed; it may be that there has been inefficient administration or a lack of immediate market interest in the land. However, it is likely that in a significant number of cases the lapse of planning permission has resulted from sites not being genuinely available or because the complexities of development have made them unattractive at the present time. Thus, I share the scepticism of the HBF in respect of this category. [147]
247. Category D relates to sites which currently have no planning permission (excluding those which fall in other categories). This is another category where the Council and HBF significantly differ. The Council consider this group can provide some 6,108 dwellings whilst the HBF suggest a modest 1,680 dwellings. It is possible that some sites will come forward, get planning permission and be subsequently built out within five years. However, even on sites which appear suitable and with a positive approach to development, applications would need to go through the planning process and potentially could face significant local opposition, with the prospect of appeal procedures, or the need to resolve previously unidentified site specific issues. Such sites may well be developed for other uses and it is clear that the HBF consider that likely in some cases given site histories. Thus, a cautious approach is only right for sites where there is no allocation or planning permission. [148]
248. The final main category of supply, Category E, is that arising from the new SHLAA sites which were not part of the SHLAA of 2012. In this respect the Council suggests some 1,685 dwellings will come forward in contrast to the HBF assessment of 879 dwellings. The HBF comments⁶³ include valid concerns which shed doubt over the realistic prospect of all these sites coming forward and also suggests a modest positive addition, yet the Council does not attach any doubt to the provision as projected. This seems unrealistic as there is a strong likelihood

⁶³ These are included in the table at tab 5 of CD50 - the Leeds SHLAA Information

that not all new SHLAA identified sites for years 1-5 will come forward and, moreover, it is unreasonable to wholly discount the HBF views given their role in, and knowledge about, the locality and building process even if they are being unduly pessimistic. [149]

249. In addition, the Council has added in windfalls at 2,500 (500 dwellings/annum); a point with which the appellant does not take issue although it seems unlikely that windfalls would come forward in the first year, possibly running into the second, because such sites are likely to have been identified. They would also be likely to have to go through the planning process. The Council also adds 600 dwellings to the five year supply for unexpected large windfall sites. I agree with the appellant that any such sites are likely to be picked up through the SHLAA process which in itself appears unrealistic in its optimism. As such, I do not consider that an addition, let alone of this magnitude, is justified. [151]
250. In addition 2,000 dwellings are added by the Council in response to bringing empty homes back into use. The appellant considers this figure to be bullish and suggests a lower rate of 1,130. It appears that the Council has a managed approach to use of empty homes, and resources to assist in this regard as noted in the letter from the Director of Environment and Housing⁶⁴. Thus, it seems something nearer the Council's figure is likely to be more accurate. I note that it seems that the CS Inspector came to the same conclusion. [104, 110, 152]
251. The Council adds 319 for prior approvals, essentially changes of use to residential where prior approval is required rather than a planning permission. The appellant does not attach any figure to this group considering that they are likely to be covered by windfalls. There is no significant experience on which to base this figure. The Council provides a table of prior notification schemes which indicates a 2013-14 list of determinations amounting to some 119 units (and a further 5 built out). However, this may represent a surge of activity following a procedural change; prior to this situation anyone wishing to change the use could apply to do so, it resulting in a windfall addition to the housing stock. Whilst such sites make a positive contribution to housing provision, based on the evidence put to me at this Inquiry it seems unreasonable to attach significant weight to this source at this time, rather such development is unlikely to be significant such that it should remain as part of the windfall sum. [103]
252. Also added are the Protected Areas of Search (PAS) sites which the Council consider suitable for release. At the time the Inquiry was sitting three of those sites had permission which would provide for 258 dwellings. Also at that time, the remaining PAS sites which would be accepted for development via the PAS policy could produce some 689 dwellings. From the Council's latest evidence one other PAS site now has planning permission for 70 dwellings (Calverley Lane), whilst another for 325 dwellings (Spofforth Hill) awaits final determination subject to s.106 matters being resolved. Clearly those matters require resolution and I am also mindful that, despite this being part of a larger potential development in the longer term, with a single developer 325 dwellings appears optimistic for the 5 year period. I note the appellant suggests development is more likely to fall in the range 0-140 dwellings. Given this is a Greenfield site

⁶⁴ Doc 16

the upper level of this range appears achievable but still significantly below that envisaged by the Council. Moreover, in respect of the remaining PAS sites, it seems unlikely that they would all come forward within the five year period and it is clear that some have additional issues such as the Spofforth site. [144]

253. I appreciate that since the Inquiry sat a site for some 181 dwellings at Methley has been released early, despite not meeting all the criteria of the interim policy. However, this was on the basis that the site provides essential flood risk infrastructure, the implications for which, in terms of timescale for development, have not been set out. Nonetheless, this indicates a positive approach to bringing housing forward within the Council's area. That said, a positive attitude does not override the need for a five year HLS. [203]

254. Whilst the Council claims that it has a five year HLS, indeed one that exceeds the requirement of 27,292 dwellings, I am not satisfied that this is founded on a realistic assessment.

255. In particular, the category A sites appear significantly optimistic especially given the DVS and GVA reports. The Category C and D sites also appear unduly optimistic. I am mindful that the Guidance acknowledges that '*the advice of developers and local agents will be important in assessing lead-in times and build out rates year by year*'⁶⁵. In this case the HBF have indicated, albeit only in broad terms in the published data, where sites are unviable, unavailable or build out rates unachievable, but this appears to have negligible impact upon the Council's assessments. [145]

256. Although it is difficult, on the evidence before me, to identify precisely the extent of housing land supply available, I consider that the supply side put forward by the Council is not all deliverable within 5 years. The sites may all be in suitable locations for housing, but I am not satisfied that they are all available, viable or achievable with a realistic prospect that housing will be delivered within 5 years.

257. Even using the Council's figure of 27,822 and excluding the prior approval sum (319), large windfalls (600), DVS identified non-viable site within the five year HLS (86) this shows an undersupply of 475 dwellings when assessed against the need I have concluded is 27,292. I accept this is a relatively modest sum given the overall requirement, but more significantly, I am not satisfied that all the sites with planning permission (Category A) (from which I have taken 86 units) are likely to come to fruition given deliverability issues set out above. Thus, I take the view it is likely to be somewhere between the HBF figure of 6,500 and the 9,863 figure which is that of the Council minus 86). The figure for sites with expired planning permission is likely to be somewhere between the Council's 2,381 and the HBF's level of 371 (and likely in my view to be at mid to lower end of that range) and sites with no planning permission are likely to be below the Council's 6,108 and nearer the HBF level of 1,680. The new sites similarly are likely to be in the range between the LPA and HBF opinions of 1685 and 879 respectively. As such, it seems that the figures provided by the Council are so over-optimistic that the supply level is not realistic. In particular the likelihood of all sites identified in categories A (with planning permission), C (those with expired permissions) and D (those with no permission) coming forward is unlikely

⁶⁵ Paragraph 023 – ref 3-023-20140306

to the extent that the supply is likely to fall short by hundreds of dwellings rather than a few.

258. Therefore, taking a more realistic view of the numbers in the A, C, D and E Categories, between which the Council and HBF have significant differences, results in a compelling conclusion that a five year HLS does not exist in Leeds. I am very much aware that, to have found the Core Strategy sound, the Inspector would have been satisfied on the evidence put to him that there was a five year HLS. However, I have to base my assessment on the evidence put before me and do not know what was put before him when looking at the supply side figures. The same also applies in respect of the evidence which will have been put to the Inquiry concerning the Bagley Lane appeal. I have heard evidence that the DVS found one site to be unviable such that it is unlikely to contribute to the five year HLS. I have been made aware of sites where there are other interests in the land and where there are additional concerns or requirements that are likely to lead to delays. Moreover, whilst the HBF may not have been positive in its assessment of sites, I have heard evidence that convinces me that not all the sites identified are likely to come forward. This is set against a position where there has already been a failure to achieve 'reduced' (i.e. stepped) targets in the first two years.
259. The more modest divergence in Category B and my own doubt regarding windfalls early in the five year period reinforce that conclusion. The reality of supply is likely to be significantly below the level set out by the Council and, so much so that even if I started the calculation from the post Inquiry higher supply figure it would not alter the overall conclusion.
260. As there is not a deliverable five year HLS, national policy in the Framework, as set out above, clarifies that relevant policies for the supply of housing should not be considered up-to-date and planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits. This reinforces concerns that policy N34 is itself out of date. It therefore follows that adverse impacts must be considered and weighed in the balance with the benefits of the proposal that would arise from developing the site for housing.
261. Moreover, since the appeal sitting period, the housing requirement has increased because a new requirement year has commenced pushing the five year period forward adding another higher level 4,700 dwelling requirement (i.e. with the step-up) yet the year which becomes a historical year (i.e. part of the period prior to the current five year period) appears most unlikely to meet its requirement of 3,660, rather it looks likely to significantly add to the existing backlog. This reinforces the view I had already arrived at prior to the later exchange following the household projections data. Although I appreciate that those projections indicate a slowing of household formation, the requirement was set at a lower stepped rate for the first five year period of the plan which to some extent would have assisted any reduced demand, however even that lower requirement has not been achieved. Whilst the Council refers to a mismatch between an optimistic SHMA and pessimistic approach to delivery this seems to be said in light of developers being pessimistic about what will come forward. However, it seems to me on the latest delivery figures (the first three quarters of 2014-2015) that pessimism is well founded realism and on that basis it is difficult to criticise developers about their attitude to delivery at this point in time.
- [113,188]

Suitability / Sustainability of the Site

262. The site has been designated green belt in the past. However, this is no longer the case, although the site is a PAS site. Whilst it was not envisaged that this site would be developed during the UDPR plan period, the PAS allocation indicates that the site is not unsuitable for development.
263. I appreciate that the site has not been assessed against other sites in terms of comparative sustainability. However, the circumstances here do not require that. Rather, the Framework sets out a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking.
264. In this regard, paragraph 7 of the Framework sets out the three dimensions to sustainable development: economic, social and environmental and paragraph 8 sets out that these three roles should not be undertaken in isolation, because they are mutually dependent. It goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, which should play an active role in guiding development to sustainable solutions.
265. Boston Spa is essentially a linear village and, whilst the appeal site is in an edge of settlement location, it is not at the periphery of the linear form, rather it is nearer to the middle. As such, the many services and facilities of the settlement would be in reasonable walking distance. I found that my normal walking pace reflected the walking times set out by the appellant's Transport and Accessibility witness. The services which were accessible on foot include schools, opticians, doctors, the library, churches, hairdressers, food retailers, public houses and restaurants, chemists, and hardware stores. I appreciate that there are no large scale food retailers and no easy access to them. However, there are food retailers within the settlement. There may be limited local employment in Boston Spa, but the large commercial trading/business estate at Thorp Arch is within cycling distance. As such, there is a likelihood of some local employment and the facilities available are likely to reduce the overall need for private transport. [176-179, 181, 193, 202]
266. The appeal proposal would contribute towards much needed housing, including affordable housing, in a location where future residents would be able to gain reasonable access to services and facilities and some employment by use of sustainable means of transport. The additional residents would be likely to contribute to the local economy so adding benefits over and above those arising from the work associated with the development itself. Whilst there would be the loss of an area of undeveloped land, the benefits of the scheme and attributes of the site are such that its development would be socially sustainable, would contribute to economic sustainability and would result in an environmentally positive development that would be well related to an existing community.
267. On this matter I conclude that the proposed development would be a sustainable development as set out in the terms of the Framework that would widen the choice of high quality homes in an area where they are required.

Prematurity

268. Boston Spa is a settlement where the community clearly takes an active role in its development. Neighbourhood plans are being actively pursued and have seen a positive response from the local community. The Inquiry was told that, overwhelmingly, the local view is that new development should be small scale. Despite the admirable local interest in the development of neighbourhood plans for Boston Spa and Clifford, I must consider the weight that can be attached to them. At this point there is no published plan although I was told at the Inquiry that it was hoped that the final draft plan for Clifford would be published in early 2015. No notification has been made to suggest the status of either neighbourhood plan has changed. Nonetheless, as nothing is certain I cannot accord weight to the on-going work in respect of the neighbourhood plans.
269. As set out above at paragraph 210, and particularly given the size of the site and its location, I do not consider that the development proposed in this case is so substantial, or its cumulative impact so significant, that granting planning permission would undermine the plan-making process for the scale, location or phasing of housing in the emerging DPD. It may have implications for the future development of Boston Spa, but as I have noted, the proposed neighbourhood plan is at an early stage in its development. Thus, I am not satisfied that allowing the scheme would prejudice the plan-making process. What is clear is that there is a pressing need for housing now, evidenced by the Core Strategy housing requirements and the fact that in the first two years of the plan there has been an undersupply of new housing. [158-175, 200, 202]

270. I conclude that the proposed development would not be premature.

Other Matters

271. Local residents express significant concern about highway safety issues. I found that driving the routes from the site towards the village centre and main facilities required care because of the angles of the junctions. However, that level of care and the concentration required results, it seems, in lower traffic speeds, and therefore traffic accidents do not arise. Indeed the Parish Council acknowledged the safe, cautious approach of locals using these roads.
272. I also heard that there are concerns about the nearby rural lanes and that they would become less pleasant places to enjoy. Nevertheless, there is no evidence to suggest that there would be a significant change in traffic levels on those smaller roads as a result of the proposed development. [193, 201, 202]
273. The Highway Authority does not object to the scheme in highway safety terms and nor does the Local Planning Authority. There is no substantiated evidence before me to come to a contrary conclusion. [37, 180]
274. The site is situated outside, but not far from, the Boston Spa Conservation Area. However, it was agreed by the main parties that a full scheme could be developed which would preserve the setting of the Conservation Area, a view with which I concur. I am also satisfied that the development would not result in harm to the remaining trees protected by a Tree Preservation Order. [46-47, 202]
275. The site abuts the curtilage of Martin House Hospice, a hospice for children and their families. At the site visit I saw that there were some sensitive areas facing

towards the appeal site boundary, including mortuary facilities, and special areas for the bereaved. There is some importance of the positioning of those spaces which are adjacent to the general peace and quiet of the appeal site as an agricultural field with some mature trees along the boundary area. The appellant has undertaken some additional planting in this area, which eventually would provide better screening than at present. The appellant explained that this area would be a managed space without public access. In addition it is proposed as part of the scheme, and through the s.106, to provide additional parking facilities adjacent to the boundary. I recognise that this is a particularly delicate issue and some other uses might be considered preferable in this location. Overall, the scheme would, in time, provide for a reasonable degree of visual separation between the hospice and the proposed residential use and so I consider that planning permission should not be withheld on the basis of the interrelationship between the two uses. [184, 199, 201, 194]

Conditions

276. The application has been made in outline and so a time condition is required in respect of reserved matters and commencement. A condition is required to set out what the reserved matters are. In addition it is necessary to impose a condition setting out the approved plans for the avoidance of doubt and in the interests of proper planning.

277. A condition is required in 'Grampian' form for off site highway works in the interest of highway safety. Highway conditions are also required for the same reason in respect of on site highway works in terms of visibility splays and the requirement to provide the highway to a dwelling prior to its occupation. A condition is also required in respect of the Travel Plan which seeks to encourage use of more sustainable means of transport.

278. Conditions are required to ensure satisfactory drainage of the site; these clarify the need for separate foul and surface water drainage; the surface water drainage, balancing flows and run-off rates; mitigation measures in accordance with the Flood Risk Assessment; foul water drainage including off site works; and, the requirement that foul drainage is in place before dwellings are occupied.

279. Given the location of the site adjacent to a historic settlement, and in an area of prehistoric and later activity, it is reasonable to require a programme for archaeological recording even though geophysical survey works did not identify any specific likelihood of significant archaeological remains.

280. A construction management scheme is sought along with a working hours condition in the interests of the living conditions of nearby residents, including those at the adjoining hospice. These conditions are reasonable and necessary given the proximity to residential uses and the generally quiet nature of the locality.

281. Landscaping is a reserved matter but conditions are reasonable and necessary in the interests of the visual amenities of the area as they specifically seek to deal with boundary treatment and landscape management plans. Additional conditions are reasonable and necessary to protect retained and preserved trees, including trees with TPO's which contribute significantly to the character and visual amenity of the area, in terms of protection during works, standard of tree works, protection from damage and removal for five years from the date of

occupation of the last dwelling and similarly five years protection for new landscaping. The TPO trees also have separate legislative protection.

282. A condition is also reasonable in respect of biodiversity and providing bat roosting and bird nesting opportunities on buildings following the development of this site. This is to mitigate the loss of habitat, albeit modest on the site.
283. Although the site has only been used for agricultural purposes the Council seeks a condition in respect of unexpected significant contamination. A condition is also sought to ensure that materials brought onto the site for landscaping purposes, including gardens are tested to be free from contamination. As there is no evidence of contamination on this site, and the Desk Study and Geo-Environmental Report found 'no contamination to be present' I am not satisfied that the first of these conditions is necessary. Nor do I consider it necessary to require landscaping materials are tested as free from contamination as there is nothing to indicate that this is likely to be a problem. I therefore shall not impose these conditions

S.106 Agreement

284. The contributions established in the s.106 are set out above. I am satisfied that the affordable housing provision, travel contributions, education contribution and public open space contributions are directly related and necessary. These sums relate to the established supplementary policies of the City Council, namely: SPG3- Affordable Housing Policy Guidance; SPD – Travel Plans and SPD – Public Transport Improvements and Developer Contributions; SPG11 – Section 106 Contributions for School Provision 2001; and, SPG4 – Greenspace Relating to new Housing Development 1998⁶⁶. The sums calculated are proportionate to the planning needs generated by the development. I am satisfied that these obligations meet the three tests for planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and the Framework, I have therefore taken them into account in reaching my recommendation.

285. Whilst the requirement to provide a car park for the adjacent hospice is not a requirement of the housing development, it forms part of the planning application proposal and so forms part of the application scheme. Moreover, whilst the laying out of the car park does not directly relate to the housing use of the site it would be necessary to provide a buffer in this location. I have not attached weight to the benefits of the car parking provision in assessing the housing element of the scheme. However, it is worth clarifying that the car park proposed would be compatible with the living conditions for residents of the housing scheme.

Planning Balance

286. Having regard to the balance set out in the Framework, based on the evidence put to me by the parties at, and in the exchange of correspondence after, the Inquiry as recorded above, I find that the adverse impacts of granting the proposed development are limited and that there are no material harms that

⁶⁶ CD19-25

significantly and demonstrably outweigh the very real benefits of providing new homes to significantly boost the supply of housing as required by the Framework.

Recommendation

287. For the reasons set out above, on the basis of the evidence before me, I recommend that the appeal be allowed and planning permission granted.

Zoë H R Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Natalie Lieven QC She called David Feeney BA(Hons) MTPL MBA MRTPI Adam Ward MA(Hons) MRTPI Adam Brannen BA(Hons) MRTPI Martin Elliot MA(Hons) Geography MA Town Planning MRTPI	Instructed by: The Solicitor of Leeds City Council Head of Forward Planning and Implementation, Leeds City Council Deputy Area Planning Manager, Leeds City Council Programme Manager, Asset Management and Regeneration Division, Leeds City Council Team Leader Data and Geographical Information Systems, Forward Planning and Implementation Service, Leeds City Council
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FOR THE APPELLANT:

Jeremy Cahill QC He called David Rolinson BA(Hons) MRTPI DipPELaw Mark Johnson RICS MRTPI David Sagstad BENG(Hons) CMILT MCIHT	Instructed by Roddy Macdonald, Eversheds Chairman, Spawforths Managing Director, Johnson Brook Planning and Development Consultants Director , Development Planning Limited
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On the final sitting day:

Peter Nesbitt

Eversheds LLP
Read Mr Cahill's closing submissions and
represented the appellant.

INTERESTED PERSONS:

David Thomson Brian Charlton Cllr Proctor Pippa Sterne Sarah Pim	Boston Spa Parish Council Boston Spa Parish Council Local resident Local resident
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appearances on behalf of the appellant
- 2 Boston Spa Parish Council – list of issues
- 3 Martin Elliot Proofs of Evidence and Documents List
- 4 Bundle of Documents by District Valuer Services (Core Doc 49)⁶⁷
- 5 Statement of Common Ground – 5 Year Housing Land Supply
- 6 Spen Common Lane Note (Core Doc 47)

⁶⁷ Unlike other Core Document additions this is filed with the Inquiry Documents

- 7 Thorp Arch Note (Core Doc 48)
- 8 Suggested Planning Conditions
- 9 Draft s.106 Agreement
- 10 Opening Statement on behalf of the appellant
- 11 Opening Statement on behalf of Leeds City Council
- 12 Policy N34 with supporting text (addition to Core Doc 1)
- 13 Bundle of plans of sites within Housing Market Characteristic Areas
- 14 Leeds SHLAA 2013 Site Schedules (Core Doc 50)
- 15 Extract ID 10-024-20140306 from planning guidance
- 16 Letter from Neil Evans regarding empty properties
- 17 Extract ID 3-035 to 037-20140306 from planning guidance
- 18 Parish Council Statement with appendices
- 19 Response Statement of Mark Johnson on Matters of Viability
- 20 Extract from the planning guidance – whole section entitled Viability
- 21 Certified copy of the signed s.106 Agreement
- 22 Statement Regarding Boston Spa Neighbourhood Plan
- 23 Updated Planning Conditions
- 24 Further update to Planning Conditions
- 25 Closing comments of Boston Spa Parish Council
- 26 Closing Submissions of behalf of Leeds City Council
- 27 Closing Submissions on behalf of the appellant

CORE DOCUMENTS

- CD1 Leeds UDP (2006) Extracts
- CD2 Leeds UDP (2001) Extracts
- CD3 UDP Deposit Draft (June 1993) Extracts
- CD4 UDP Inspector's Report Extracts
- CD5 Draft Leeds Planning and Development Brief – Green Lane/Grove Road, Boston Spa, 1998
- CD6 UDPR Inspector's Report Extracts
- CD7 Wetherby and District Local Plan (1984) Extracts
- CD8 Leeds Site Allocations Plan Issues and Options (June 2013) Extracts
- CD8a Site Allocations Issues and Options Vol. 1 June 2013
- CD8b Site Allocations Issues and Options Vol. 2 Outer North East June 2013 Extracts
- CD9 Application 31/236/98FU Committee Report
- CD10 Tree Preservation Order (TPO 1/969) and Tree Preservation Order consent (Ref. TR 16973 TPO 1/1969 (Wetherby))
- CD11 City Plans Panel Position Statement, dated 24 October 2013
- CD12 City Panel Committee Report, dated 16 January 2014 and Minutes
- CD13 Appeal Proposals Package
- CD14 Secretary of State saving letter June 2009
- CD15 PPG2 Green Belts Extract
- CD16 Local Development Scheme Extracts (2007, 2010, 2013, 2014)
- CD17 Leeds Draft Core Strategy
- CD17a Core Strategy Publication Draft February 2012

- CD17b Core Strategy Pre-submission Changes December 2012
- CD18 Leeds Draft Core Strategy Main Modifications
31 January 2014
- CD19 SPG3- Affordable Housing Policy Guidance
- CD20 SPG4 – Greenspace Relating to new Housing Development
1998
- CD21 SPG11 – Section 106 Contributions for School Provision 2001
- CD22 SPG13 – Neighbourhoods for Living 2003
- CD23 SPG25 – Greening the Built Edge 2004
- CD24 SPD – Travel Plans
- CD25 SPD – Public Transport Improvements and Developer
Contributions
- CD26 Boston Spa Conservation Area Appraisal and Management
Plan
- CD27 Interim Policy – Potential Release of Sites in the Protected
Area of Search
- CD28 High Court Judgement Case No. CO/6890/2013 ([2014]
EWHC 82 (Admin) and Permission to Appeal to Court of
Appeal
- CD29 The National Planning Policy Framework
- CD30 Localism Act (November 2011) (web link provided)
- CD31 Ministerial Statement – New Homes Bonus (4 April 2011)
- CD32 Ministerial Statement – Housing and Growth (September
2012)
- CD33 Ministerial Statement – Making the Planning System work
more efficiently and effectively (March 2014)
- CD34 National Planning Practice Guidance March 2014 (web link
provided)
- CD35 Laying the Foundations: A Housing Strategy for England
(November 2011)
- CD36 Removed as advice cancelled
- CD37 Council Executive Board Decision June 2011 Extracts
- CD38 5 Year Housing Land Supply (See Appendices of Proof)
- CD39 Leeds Strategic Housing Market Assessment Update May 2011
- CD40 Authority Monitoring Report 2011-12
- CD41 Report to Development Plan Panel – Authority Monitoring
Report
- CD42 Authority Monitoring Report 2013
- CD43 High Court Judgement: Coleman 2013 [2013] EWHC 1138
(Admin) Case No: CO/12831/2012
- CD44 Elworth Hall Farm Appeal Decision APP/R0660/A/13/2196044
- CD45 High Court Judgement: Gallagher & Lioncourt Homes 2014
[2014] EWHC 1283 (Admin) Case No: CO/17668/2013
- CD46 LPA Proof of Evidence for the Grimes Dyke Appeal
(APP/N4720/A/09/2117920/NWF)
- CD47 Spen Common Lane, Bramham Note (Inq Doc 6)
- CD48 Thorp Arch Note (Inq Doc 7)
- CD49 Bundle of Documents by District Valuer Services
- CD50 Leeds SHLAA Information

Appellant's Documents

- APP A Mr M Johnson – Proof of Evidence; Appendices; Rebuttal; Further Response
- APP B Mr D Rolinson – Proof of Evidence; Summary; Appendices
- APP C Mr D Sagtdad – Proof of Evidence with appendices
- APP D Bundle of Documents during the adjournment and after the Inquiry sat

The Council's Documents

- LPA A Mr M Elliot – Proof of Evidence with appendices; Summary; Rebuttal; Proof of Evidence on HLS with appendices; DVS Further Note; Amendment to Appendix III
- LPA B Mr D Feeney – Proof of Evidence; Appendices; Summary; Rebuttal
- LPA C Mr A Brannen - Proof of Evidence with appendices; Summary
- LPA D Mr A Ward - Proof of Evidence with appendices; Summary
- LPA E Bundle of Documents during the adjournment and after the Inquiry sat

Annex A - Planning Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (February 2013); Site Layout (with redline) BS/Plan/out rev B; Site Layout (without redline) rev B; Proposed Site Access.
- 4) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 5) No development shall commence until details of the off-site highway works (which comprise the details of the improved pedestrian crossing facilities on Grove Road) have been submitted to and approved in writing by the local planning authority. The approved off-site works shall be implemented prior to the first occupation of the development and retained thereafter.
- 6) The access hereby approved shall not be brought into use until works have been undertaken to provide the visibility splays shown on the approved plan Ref: BS/Plan/out Rev B. These sight-lines shall be retained thereafter clear of any obstruction to visibility greater than 1.05m in height above the adjoining carriageway.
- 7) The development shall not be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The plan shall comprise measures to encourage alternative modes of transport for residents and their visitors other than single occupancy of vehicles, including timescales for when those measures shall be put into place and procedures for monitoring the uptake of alternative modes of travel and providing evidence of compliance. The Travel Plan shall be fully implemented and operated in accordance with the agreed timescales.
- 8) No dwelling shall be occupied until the areas shown on the approved plans to be used by vehicles to access that dwelling's plot have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.
- 9) Development shall not commence until full details of surface water drainage including provision of retention basins/tanks/oversized pipes have been submitted to and approved in writing by the local planning authority. The details shall include location, design, materials, levels, proposals for any off-site watercourse work, balancing of flows to greenfield rates of run-off and details of maintenance of the sustainable drainage systems. The scheme shall be implemented in accordance with the approved details prior to occupation of any part of the development, or to a timetable to be agreed in writing with the local planning authority.

- 10) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment Ref: 425/56 dated December 2012. The mitigation measures shall be fully implemented prior to occupation of any dwelling and in accordance with timing/phasing arrangements set out, or in accordance with a phasing/timing programme to be agreed in writing with the local planning authority prior to the commencement of development.
- 11) No development shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works, have been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the details hereby approved.
- 12) No development shall take place until a programme of archaeological recording has been secured. This recording shall be carried out in accordance with a written scheme of investigation that includes the qualifications and suitability of the person undertaking the archaeological works and timing of such works, which has been submitted to and approved in writing by the local planning authority. The archaeological recording shall be undertaken in accordance with the approved scheme.
- 13) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - viii) routes of construction traffic.
- 14) Construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 hours to 1600 hours on Saturdays nor at any time on Sundays or Public Holidays.
- 15) No development shall take place until a plan has been submitted to and approved in writing by the local planning authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details and a timetable to be agreed in writing with the local planning authority prior to the occupation of any dwelling on the site.
- 16) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever

- is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 17) No site clearance, preparatory work or development shall take place until a scheme has been drawn up that identifies the trees to be retained on the site (the retained trees), the measures to be taken for their protection (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS5837 *Trees in Relation to Construction- Recommendations* and submitted to and approved in writing by the local planning authority. The retained trees shall be protected in accordance with the approved details. Both the tree protection plan and the arboricultural method statement shall be accompanied by appropriate drawings showing details of changes in level, foundations and paving, boundary treatment, utilities routes and proposed landscaping operations, in so far as they may affect the retained trees.
 - 18) No retained tree shall be cut down, uprooted or destroyed, or have roots or branches pruned, cut or damaged in any manner within five years from the date of occupation of the last dwelling, or other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
 - 19) All tree work shall be carried out in accordance with British Standard BS3998 *Recommendations for Tree Work* unless otherwise agreed in writing with the local planning authority.
 - 20) If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place as soon as reasonably possible and no later than the first available planting season, unless the local planning authority gives its written approval to any variation.
 - 21) Prior to the commencement of development, a scheme shall be submitted to and approved in writing by the local planning authority of bat roosting and bird nesting opportunities (for species such as House Sparrow, Starling, Swift, Swallow and House Martin) to be provided within buildings and elsewhere on-site. The agreed scheme shall show the number, specification of the bird nesting and bat roosting features and where they will be located. The scheme shall thereafter be implemented before the development is brought into use and retained for the lifetime of the development.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.