

**Land between Woodchurch  
Road and Appledore Road,  
Tenterden  
Five Year Land Supply Report**

Wates Developments Limited

April 2021

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## 1.0 Introduction

- 1.1 This report has been prepared by Lichfields on behalf of the Wates Developments Limited. It relates to a revised hybrid application for a development at 'Land between Woodchurch Road and Appledore Road, Tenterden'.
- 1.2 An application has been submitted for a development comprising up to 145 dwellings as the outline element with the creation of a country park as the detailed element. This is a revised submission following a previous application for 250 dwellings at the site (ref. 19/01788/AS) that was refused by Ashford District Council ('the Council') in September 2020.

### Purpose and scope

- 1.3 All Local Planning Authorities ('LPA') are required by Para 73 of the National Planning Policy Framework (2019) ('NPPF') to demonstrate a five-year housing land supply ('5YHLS'). At present, Ashford District Council acknowledges that it is unable to demonstrate a 5YHLS as set out in its latest July 2020 position (published November 2020): with a supply equating to 4.80-years. As a result, Para 11(d) of the NPPF (2019) – the so-called 'titled balance' – is engaged by virtue of a lack of 5YHLS (as per Footnote 7) in the determination of planning applications for housing.
- 1.4 Importantly, the Council's latest position does not consider the impact of the ongoing Stodmarsh nutrient issue that has caused many developments in the borough to stall. The initial Natural England Stodmarsh advice was published in November 2020 and has been affecting the delivery of sites since. While the 5YHLS report was published after the initial Stodmarsh advice, its base date is prior to said initial advice. It therefore does not consider the impact of the issue on the Council's supply.
- 1.5 The purpose of this report is therefore to review the Council's 5YHLS position to determine whether the shortfall is greater than the 4.80-years currently advanced via a review of the Council's purported five-year housing requirement and deliverable supply. This review will focus particularly on the impact of the ongoing Stodmarsh nutrient issue and its effect on the 'deliverability' of the Council's supply. Determining the true scale of the shortfall – especially given the Stodmarsh issue – is important to determining the weight that should be attributed to the shortfall itself and the weight to the provision of homes as part of this planning application.
- 1.6 At present, we are unaware of any appeal decisions that have been issued grappling with the Council's latest 5YHLS position in light of the Stodmarsh issue.

### Ashford District Council's latest 5YHLS position

- 1.7 The Council's latest 5YHLS position was agreed to be published at the 26<sup>th</sup> November 2020 'Local Plan & Planning Policy Task Group'<sup>1</sup>. The report – dated 31<sup>st</sup> July 2020 – reviews the Council's five-year requirement and deliverable supply over the five-year period from 1<sup>st</sup> July 2020 to 30<sup>th</sup> June 2025. A summary of the Council's position is set out below showing a shortfall of 295 units in the relevant period.

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<sup>1</sup> <https://ashford.moderngov.co.uk/documents/s13095/Notes%20of%2026th%20November%202020.pdf>

Table 1.1 Ashford Borough Council's Stated 5YHLS Position

	Council's Stated 5YHLS Position
Five-Year Requirement (including buffer) (units)	7,405 units
Total Deliverable Supply (units)	7,110 units
Years Supply	4.80 Years
Surplus / Shortfall	-295 units

Source: Ashford Borough Council 'Five Year Housing Land Supply Update' (July 2020)

## Structure

1.8 In order to review the Council's stated 5YHLS position, this statement is set out as follows:

- **Section 2.0** sets out the relevant policy and guidance for assessing 5YHLS;
- **Section 3.0** assesses what the Council's five-year housing requirement is;
- **Section 4.0** sets out a review of policy and guidance in relation to assessing the deliverability of sites, setting out a 'deliverability review framework';
- **Section 5.0** sets out a deliverability review – focusing on Stodmarsh affected sites – of the Council's latest housing trajectory against the policy and guidance identified in Section 4.0. It also considers the Council's windfall allowance;
- **Section 6.0** summarises the Council's 5YHLS position based upon our findings in Sections 5.0 considering the weight that should be attributed the shortfall identified; and
- **Section 7.0** summarises our conclusions.

## 2.0 Relevant Policy and Guidance

### Development Plan

- 2.1 The current Development Plan for Ashford Borough Council is made of the ‘Ashford Local Plan’ (2011-2030) (‘the Local Plan’). The Local Plan was adopted in February 2019; the document sets out the vision, objectives and strategy for the development of the Borough up to 2030.

### National Planning Policy Framework (February 2019)

- 2.2 The NPPF (2019) states that the presumption in favour of sustainable development should be at the heart of plan-making and decision-taking. For decision-taking, Para 11 of the NPPF is clear that this means:

*“c. approving development proposals that accord with an up-to-date development plan without delay; or*

*d. where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. 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.”*

- 2.3 Footnote 7 of the NPPF confirms that circumstances where policies are ‘out-of-date’ *“includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites for applications for housing development.”*

- 2.4 The NPPF (2019) also states that:

*“... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies<sup>36</sup>, or against their local housing need where the strategic policies are more than five years old<sup>37</sup>...” (paragraph 73)*

- 2.5 Specific policy and guidance regarding how local housing need and 5YHLS should be calculated is described in the respective sections of this report.

## 3.0 The Housing Requirement

- 3.1 This section of the report establishes what the correct housing requirement for Ashford Borough Council is for 5YHLS purposes in light of the latest policy and guidance. This Council's latest 5YHLS position – July 2020 – concludes the five-year requirement is 7,405 units (including a buffer). The below sets out a review of whether this is the appropriate housing requirement.

### The Council's basic five-year requirement

- 3.2 In respect of identifying the appropriate housing requirement for calculating 5YHLS, Para 73 of the NPPF (2019) states the following:

*“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies (36), or against their local housing need where the strategic policies are more than five years old.”*

- 3.3 The Ashford Local Plan (‘the Local Plan’) was adopted in February 2019 and is therefore for less than five-years old. In such circumstances, the appropriate requirement for assessing five-year supply is the requirement as set out in the Local Plan. Table 1 in the Local Plan sets out the objectively assessed housing need in the borough is 16,872 dwellings from 2011 to 2030 (i.e. 19-years). This equates to an average of 888 dwellings per annum (‘dpa’).
- 3.4 The basic five-year requirement is therefore 4,440 units (888\*5) which is correctly identified in the Council's latest 5YHLS position (July 2020).

### Backlog

- 3.5 Where shortfalls in housing completions have occurred from the base date of a local plan, the shortfall accrued should be added to the five-year requirement (PPG ID: 68-031). This is otherwise known as the ‘Sedgefield’ approach. However, as part of the plan-making process an LPA may deal with the shortfall over a longer period of time where approved by an Inspector.
- 3.6 When the Council adopted its Local Plan, a backlog of 2,462 dwellings had accrued (from 2011 to 2018). In respect of calculating backlog for the purposes of five-year supply, Policy SP2 in the Local Plan states:
- “... the shortfall in housing delivery between 2011 and 2018 shall be rectified over a 7 year period to 2025 at an average of 352 dwellings per annum. .... From 2025 onwards, the housing requirement should then reflect the annualised OAN requirement plus any relevant buffer.”*
- 3.7 Given the current five-year period starts in 2020 and ends in 2025 the backlog accrued is over the whole five-year period. In essence, this means the normal Sedgefield approach is now applied. As detailed in the Council's latest 5YHLS position, the shortfall as of July 2020 stands at 2,612 units. In line with this the Council applies the whole backlog to the basic five-year requirement.

### Buffer

- 3.8 In accordance with Para 73 of the NPPF (2019), the appropriate buffer for the Council is 5% given its latest 5YHLS position is not an Annual Position Statement nor has the Council recorded a significant under delivery of housing as measured by the Housing Delivery Test. The Borough recorded a measurement of 90% in the latest 2020 HDT<sup>2</sup>.

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<sup>2</sup> Published in January 2021 by MHCLG

## Conclusion

3.9 In accordance with policy and guidance, and for the purposes of this review, Ashford Borough Council’s five-year requirement is 7,405 units as set out in Table 3.1.

Table 3.1 Assessment of Ashford Borough Council’s Five-Year Requirement

Five-Year Requirement	The Council’s Position	Lichfields’ Position
Basic Five-Year Requirement	888 dpa	888 dpa
Backlog	2,612	2,612
Buffer	5%	5%
<b>Total Five-Year Requirement</b>	<b>7,405 units</b>	<b>7,405 units</b>

Source: Ashford Borough Council ‘Five Year Housing Land Supply Update’ (July 2020), Lichfields analysis

## 4.0 Housing Land Supply: Deliverability Review Framework

4.1 For the purposes of assessing the Council's 5YHLS deliverable supply the below sets out a review of relevant policy and guidance in terms of what is required of LPAs to demonstrate that they have sufficient land to meet five years' requirement for housing. This sets out a framework for how we review the Council's supply in Section 5.0 of this report.

### 'Deliverable Sites'

#### Policy and guidance

4.2 To 'demonstrate' a 5YHLS, NPPF (2019) Para 73 requires local planning authorities to identify a supply of specific 'deliverable' sites sufficient to meet five-years' worth of housing (in this case 7,405 units). The NPPF (2019) defines a 'deliverable' site as:

*"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

*a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

*b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years." (Annex 2, page 66)*

4.3 The Secretary of State recently confirmed his interpretation that the definition of 'deliverable' should not be taken as being a 'closed list'<sup>3</sup>. He stated that *"examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition"* (Paragraph B of the Consent Order). Therefore, sites not specifically listed in the definition of deliverable can be found to be 'deliverable' where that site can be shown to 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'.

4.4 The PPG provides further guidance on what constitutes a 'deliverable' site in the context of decision-taking and the evidence required to demonstrate deliverability, for example such evidence may include:

- *"current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*

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<sup>3</sup> See Consent Order for East Northamptonshire Council v Secretary of State for Communities and Local Government (CO/917/2020) - <https://cached.offlinehbpl.hbpl.co.uk/NewsAttachments/RLP/CO009192020.pdf>

- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.” (ID: 68-007)*

## Interpreting the policy and guidance

- 4.5 From the above, our interpretation of policy and guidance is summarised as follows:
- **‘Category A’** sites are those listed in the definition of ‘deliverable’ (i.e. sites with a detailed permission) and – in accordance with the PPG (ID: 68-007) – are sites that are ‘in principle’ deliverable. It is only when these sites expire or a party presents ‘clear evidence’ that these sites will not deliver within the five-year period that they should not be considered deliverable (i.e. to overturn the presumption that they are ‘deliverable’).
  - **‘Category B’** sites are – in effect – any site that does not have a detailed permission (including those types of sites not specifically listed in the definition). It is for an LPA to demonstrate these sites are deliverable with published ‘clear evidence’ that housing completions will begin on site within five-years. The test is not whether or not the Council’s assumptions on any one site are unrealistic, it is that they have to be shown to be clearly realistic<sup>4</sup>.
- 4.6 What does and does not form ‘clear evidence’ has been a matter of much debate at various planning appeals. Ultimately, there is no definition of ‘clear evidence’ and determining what does form ‘clear evidence’ is a matter of planning judgement.
- 4.7 As well as considering relevant policy and guidance as to what constitutes a ‘deliverable’ site and ‘clear evidence’, the proposed lead-in times and build-out rates suggested are relevant to assessing ‘deliverability’. For example, a site may be found to be ‘deliverable’ but that the number of units assumed to be delivered is unrealistically high against known benchmarks.
- 4.8 The Council has not explicitly undertaken or referenced as part of its housing land supply position a review of any lead-in times and build-rates. As a consequence, there are no benchmarks upon which the LPA appears to have assessed what is a realistic timescale for when a site will come forward; and when it does, at what rate it might reasonably deliver at. In the absence of such information, where appropriate, we benchmark the Council’s assumed lead-in times/build-rates with the findings of Lichfields research report ‘Start to Finish’ (2nd Edition) published in February 2020. This updated report follows the previous award winning<sup>5</sup> and widely cited<sup>6</sup> first edition published in November 2016.

## The ‘Stodmarsh’ issue: impact on ‘Deliverability’

- 4.9 Taking the above together, the below considers the impact on demonstrating deliverability in light of the Stodmarsh Issue.

### What is the Stodmarsh issue?

- 4.10 The Stodmarsh is a group of internationally important wildlife sites (SAC, SPA, Ramsar, SSSI, and NNR) that are being adversely affected by nitrogen and phosphorous pollution. Natural England published guidance regarding the issue in November 2020. The source of these pollutants is mainly wastewater from existing housing and agricultural sources. As a result, developments in the River Stour catchment (that feed the Stodmarsh) are being stalled as new

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<sup>4</sup> Appeal ref. 3236460 (IR65)

<sup>5</sup> It won the RTPi Planning Consultancy Award in 2017 for Research Excellence

<sup>6</sup> For example, at the examination of the North Essex Authorities Shared Strategic (Section 1) Plan (see IED/011 & IED/022).

development in this area would add additional pressure on the Stodmarsh. The river catchment includes large areas of Ashford Borough, in effect inhibiting further development proposals and new planning permissions from coming forward unless they can demonstrate ‘nutrient neutrality’.

- 4.11 We understand the Council are actively working on strategic solutions to enable new housing development to restart but the timescales for this are uncertain.

### What impact does this have on the deliverability of sites?

- 4.12 ABC’s latest advice (March 2021<sup>7</sup>) sets out that any existing proposal with a detailed permission (i.e. Category A sites) fall outside the new regime to ensure ‘nutrient neutrality’. The Stodmarsh issue therefore is most acute for sites without an extant permission (e.g. allocations, windfall sites etc.) that may well be stalled unless it can be demonstrated on-site measures can ensure ‘nutrient neutrality’. At present, the Council is also not approving Reserved Matters permissions for sites in the affected area that have an extant outline permission. This is a precaution and may change subject to awaited legal advice.

- 4.13 In terms of assessing deliverability, the Stodmarsh issue has the following effects:

- **Category A** sites with a detailed permission within the affected area are unaffected (in these terms). These sites are therefore assumed to be deliverable unless there is clear evidence presented that demonstrates that these sites will not deliver within the five-year period;
- **Category B** sites (i.e. those without detailed permission including sites with outline permission, sites on the brownfield register, and allocations) within the affected area, the ongoing Stodmarsh issue means that these sites are no longer assumed to be ‘a suitable location for development now’ as planning permissions for development (including reserved matters at present) cannot be granted. As a consequence, these sites are now inherently undeliverable without ‘clear evidence’ that nutrient neutrality can be achieved (and planning permission granted). That is irrespective of previously published ‘clear evidence’ that may or may not have been sufficient to demonstrate deliverability prior to the initial publication of the Stodmarsh advice. The definition of deliverable clearly includes the requirement to be suitable now.

Arguably, a strategic solution could be found in the short to medium term that will enable sites to deliver in the five-year period. However, there is not yet the evidence to demonstrate either what the strategic solution will be or when it could realistically be delivered. As such, it is not possible to say how many years completions a site may be able to deliver within the relevant period at this time should a strategic solution be found.

This is particularly an issue for larger allocation sites without a permission. Unless a strategic solution is found in the relatively near future, there will not be sufficient time to implement said solution, approve a detailed planning application, discharge conditions, open up the site, and eventually deliver completions.

- 4.14 On the basis of the above, the Stodmarsh issue is now highly pertinent to the Council’s overall supply position. Section 5.0 of this report therefore considers the deliverability of the Council’s stated supply with a focus on those sites affected by the Stodmarsh issue.

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<sup>7</sup> <https://www.ashford.gov.uk/planning-and-development/planning-applications/making-planning-applications/habitat-regulations-assessment-september-2020/>

## 5.0 Housing Land Supply: Deliverability Review

5.1 In total the Council identify a supply of 7,110 units over the relevant five-year period. Table 5.1 below sets out the Council's supply breakdown.

Table 5.1 Ashford Borough's Specific Supply

Source of Supply	No. Units
<b>Category A</b>	
Allocated sites with Full PP	2,815
Major windfall sites under construction	270
Major windfall sites with full permission - not started	68
Minor windfall sites under construction	145
Minor windfall sites not started	537
<b>Total Category A</b>	<b>3,835</b>
<b>Category B</b>	
Major allocations NS with OL PP	648
Local Plan/NP allocation (no PP)	2,272
<b>Total Category B</b>	<b>2,920</b>
<b>Other Supply</b>	
Draft allocations (Neighbourhood Plans)	5
Future expected windfalls (allowance based on past trends)	350
<b>Total Other Supply</b>	<b>355</b>
<b>Total Supply</b>	<b>7,110 units</b>

Source: Solihull 'Five Year Land Supply as at 1st April 2020' Report (July 2020).

5.2 The supply is primarily split between Category A and Category B sites. The majority (54%, 3,835 units) of the Council's supply is from Category A (i.e. presumed deliverable); however, a large proportion of the supply is Category B (41%, 2,920 units) requiring the publication of 'clear evidence'. The below sets out a review of the Council's supporting evidence and a deliverability review of sites included in the supply.

### Overview of the Council's published evidence

5.3 In support of the Council's position, there is a range of site-specific evidence in support of the sites. This includes general sites comments (Tables A3 to A5). In addition, the Council has published (Appendix 2) site proformas. Overall, there is a significant amount of evidence in support of the sites that could form 'clear evidence'.

5.4 In contrast, (and as aforementioned) the Council's latest position does not publish or draw upon evidence in respect of lead-in times and build-rates. It also does not publish expected year-by-year completions for sites; instead, it only provides a total figure for expected completions. This limits the ability to interrogate whether lead-in times and build rates are realistic.

5.5 As an example, for site VC14 (Elwick Road Phase 2) 200 units are expected in the five-year period. There is no indication given as to when the site may start on site in the Council's evidence (including the proforma in Appendix 2) and then at what rate it could deliver at. As a guideline, Start to Finish (2<sup>nd</sup> Edition) suggests that a site of this size would deliver at 55 dpa;

meaning the site would need to record completions early in year 2 (2021/22) to be completed within the five-year period.

## Deliverability review

### Focused Stodmarsh sites review

- 5.6 As set out in the previous section, the ongoing Stodmarsh issue has major implications for the Council's deliverable supply. It is an issue that is not considered in the report given the assessment was undertaken with a base date of July 2020; i.e. prior to the Natural England guidance regarding the Stodmarsh issue being published in November 2020 (with updated guidance published by the Council in March 2021). The below sets out an initial focused review of the large sites that are affected by Stodmarsh.

Table 5.2 Focused Deliverability Review: Stodmarsh Sites

Site Name	Council Delivery in 5 Year Period	Lichfields Conclusion	Lichfields Amended Delivery
Category B: sites with Planning Permission at base date			
VC14 Elwick Road Phase 2 (ref. 15/01282/AS)	200	This is a Council owned site with outline permission that needs to be sold to a developer. No reserved matters applications have yet been submitted. However, the site falls within the Stodmarsh affected area and at present reserved matters applications cannot be determined. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 200 units.	0 (-200)
S16 Waterbrook (ref. 18/00098/AS)	150	This is a housing development with outline permission that forms part of a wider hybrid permission principally for (among other development) a 600-space truck stop. The site proforma states that a reserved matters application was being prepared for the housing element and would be submitted in late 2020. No reserved matters applications have yet been submitted. However, the site falls within the Stodmarsh affected area and at present reserved matters applications cannot be determined. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 150 units.	0 (-150)
S28 Charing – Northdown Service Station Maidstone Road (ref. 17/01926/AS & 17/00865/AS)	20	The site has outline planning permission for 17 units and full permission for 3 units. No reserved matters applications have yet been submitted for the 17-unit scheme. However, the site falls within the Stodmarsh affected area and at present reserved matters applications cannot be determined. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 17 units.	3 (-17)

Site Name	Council Delivery in 5 Year Period	Lichfields Conclusion	Lichfields Amended Delivery
S29 Charing – Land south of Arthur Baker (ref. 14/01486/AS)	40	This scheme relates to a hybrid permission of which C2 housing was approved in detail, with 40 homes in the outline element. No reserved matters applications have yet been submitted for the 40-unit phase. However, the site falls within the Stodmarsh affected area and at present reserved matters applications cannot be determined. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 40 units.	0 (-40)
S55 Charing – Land adjacent to Poppyfield (ref. 18/00029/AS and 20/00508/AS)	180	The site has outline permission and a reserved matters permission has been submitted for 135 units (ref. 20/00508/AS). However, the site falls within the Stodmarsh affected area and at present reserved matters applications cannot be determined. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 180 units.	0 (-180)
<b>Category B: Major Allocations with no planning permission at base date</b>			
S1 Commercial Quarter (ref. 18/01168/AS)	244	The site is located in central Ashford and falls within the Stodmarsh affected area. The Council expected to grant full planning permission by the end of the year following a resolution to grant, but it remains pending determination; likely due to Stodmarsh. <b>Not deliverable</b> – remove 244 units.	0 (-244)
S2 Land North East of Willesborough Road (ref. 19/00025/AS & 19/00834/AS)	288	The site falls within the Stodmarsh area. The Council expected to grant a hybrid planning permission in the Autumn 2020 following a resolution to grant, but it remains pending determination; likely due to Stodmarsh. <b>Not deliverable</b> – remove 288 units.	0 (-288)
S3 Court Lodge (ref. 18/01822/AS)	130	The site falls within an area affected by Stodmarsh. Natural England sent a letter in October 2020 confirming the application as submitted had the potential to cause significant effects on the Stodmarsh. <b>Not deliverable</b> – remove 130 units.	0 (-130)
S4 Land North of Steeds Lane and Magpie Hall Road (ref. 15/00856/AS) (Linked to S5)	150	An application for outline planning permission was submitted in September 2015 and remains pending determination. The site falls within the Stodmarsh affected area. There is no evidence the site can be delivered nutrient neutral. Therefore, the development cannot currently be determined. <b>Not deliverable</b> – remove 150 units	0 (-150)
S5 Land South of Pound Lane (ref. 15/00856/AS) (Linked to S4)	100	As above. <b>Not deliverable</b> – remove 100 units	0 (-100)

Site Name	Council Delivery in 5 Year Period	Lichfields Conclusion	Lichfields Amended Delivery
S8 Lower Queen's Road (ref. 21/00028/AS)	40	The site has no planning permission and at the base date no application had been submitted. A recent application has been made seeking outline permission for 157 dwellings. Natural England's consultation response states that the application could have potential significant effects on the Stodmarsh. There is no evidence in the submission pack that the site can be delivered nutrient neutral. Therefore, the application cannot currently be approved. <b>Not deliverable</b> – remove 40 units	0 (-40)
S13 Former Ashford South School (No Planning application)	50	The site falls within the Stodmarsh area and needs to be sold to a developer as its currently owned Kent County Council. A future application cannot at present be approved. <b>Not deliverable</b> – remove 50 units.	0 (-50)
S19 Conningbrook Residential Phase 2 (No Planning application)	100	The site doesn't have planning permission and is partly owned by the Council whom intend to progress the site for residential development before selling it to a developer. No planning application has been submitted for the development and in any case the site falls within an area affected by Stodmarsh. <b>Not deliverable</b> – remove 100 units.	0 (-100)
S20 Eureka Park (No Planning application)	130	No planning application has been submitted for the development of these homes. The site falls within an area affected by Stodmarsh so a future application cannot at present be approved. <b>Not deliverable</b> – remove 130 units.	0 (-130)
S30 Egerton – Land on New Road (No Planning application)	15	No planning application has been submitted for the development of these homes. The site falls within an area affected by Stodmarsh so a future application cannot at present be approved. <b>Not deliverable</b> – remove 15 units.	0 (-100)
S38 Smeeth – Land South of Church Road (ref. 18/01801/AS)	35	The site has an outline application submitted that is pending a legal agreement. The site falls within an area affected by Stodmarsh so the application cannot at present be approved. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 35 units.	0 (-35)
S45 Land South of Brockman's Land, Bridgefield (ref. 19/01701/AS)	100	The site has an outline application submitted that is pending a legal agreement. The site falls within an area affected by Stodmarsh so the application cannot at present be approved. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 100 units.	0 (-100)

Site Name	Council Delivery in 5 Year Period	Lichfields Conclusion	Lichfields Amended Delivery
S56 Chilham – Branch Road (ref. 19/00483/AS)	10	The site has a full planning application submitted that is pending a legal agreement. The site falls within an area affected by Stodmarsh so the application cannot at present be approved. There is no evidence the site can be delivered nutrient neutral. <b>Not deliverable</b> – remove 10 units.	0 (-10)
WNP11 Former Wye College (Appeal A: APP/E2205/W/20/3 259450 (Wye College) Appeal B: APP/E2205/W20/3 259476 (Occupation Road) Appeal C: APP/E2205/W20/3 259462 (ADAS))	50	The commentary for the site states that there are three separate applications submitted for the site which total 100 units. This is more than the 50 units allocated on the site. All three applications were noted as being at appeal as of the base date. The appeals were recently (6 <sup>th</sup> April 2021) determined with two of the three appeals dismissed. The allowed appeal related to the conversion of the former college building to 38 dwellings; a development shown to be nutrient neutral. The other two appeals were dismissed partly because there was not sufficient evidence presented to demonstrate nutrient neutrality. <b>Partly not deliverable</b> – remove 12 units.	38 (-12)
Totals	2,032		41 (-1,991)

Source: Ashford Borough Council 'Five Year Housing Land Supply Update' (July 2020), Lichfields analysis

5.7 From this focused review, 19 sites have been identified that are affected by Stodmarsh. These are sites that are in-effect no longer 'suitable' unless evidence can be provided that the developments can be delivered nutrient neutral. Until a strategic solution can be found or individual solutions agreed on a site-by-site basis, these sites are not deliverable. This means the Council's supply should be reduced by 1,991 units from these 19 sites.

5.8 It should be noted that this focused review (as detailed in Table 5.2) has considered simply whether the site can come forward in the Stodmarsh affected area. It has not considered wider deliverability considerations such as whether 'clear evidence' has been provided and whether the proposed delivery within the five-year period is realistic. These might further indicate, irrespective of the Stodmarsh issue, that these sites (or components of them) are not deliverable for other reasons.

### Non-Stodmarsh sites

5.9 From an initial review of non-Stodmarsh sites there are reservations regarding the deliverability of a number of sites based on the evidence published. This includes the **S24 Tenterden Southern Extension Phase B** site. The Council's current evidence presented in support of this site is not sufficiently clear.

5.10 For example, the site didn't have permission at the base date, but an application was expected by the end of 2020 (it is not clear from the proforma whether the application will be made in outline or seek detailed permission). To date, no planning application has yet been submitted for this development so there appears to be delay in bringing forward the site. The notes for the site in Table A4 also state that the land needs to be sold to a developer. Overall, we do not consider the evidence sufficiently clear to demonstrate why 150 units will be delivered in the five-year period. Especially given a site of this size on average takes four years from application

submission to delivery of homes as per Lichfields Start to Finish (2<sup>nd</sup> Edition) research and the Council's evidence does not demonstrate why this site will be able to deliver at more quickly than the average site. Given the evidence is not sufficiently clear for this site, it is concluded the site is not deliverable and 150-units should be removed from the Council's supply.

## Windfall allowance and small sites

- 5.11 In total, an allowance for 350-units from windfall sites is included in the five-year period. This is made up of a 200-unit allowance applied in year four of the supply (based on the 10-year average windfall completions) and a 150-unit allowance applied in year five of the supply. No windfall allowance is applied for the first three years of the supply (avoiding potential for double counting with existing permissions) which is considered justified.
- 5.12 In support of this allowance, there is a longer-term analysis of windfall delivery over a 15-year period (Table A9), an assessment of annual windfall permissions granted (Table A10), and a comparison between previously predicted windfall rates and actual delivery rates (Table A11). The final assessment in Table A11 shows that the Council has underestimated windfall delivery rates over the past four monitoring years. There is also consideration as to why past trends are likely to continue.
- 5.13 Regarding policy, the NPPF (2019) position is that a windfall allowance should only be included where there is 'compelling evidence' (Para 70) that an allowance should be made. On the basis of the evidence set out, it would normally be considered the windfall allowance advanced would be justified and reasonable in presenting a cautious position at rates below the 10-year average. However, it is considered that the Stodmarsh issue will affect trends and warrants a downgrade in the Council's future windfalls at the current point.
- 5.14 The Stodmarsh issue effects large areas of ABC including the principal urban centre of Ashford. In the meantime before a strategic solution is found, new developments in the affected area are unable to come forward unless it is demonstrated the individual site can be delivered on a nutrient neutral basis. Putting on site mitigation for minor and some major developments may either be impractical or severely harm viability (i.e. making the sites unachievable). The number of windfall completions is therefore likely to fall in the current five-year period given the Stodmarsh issue. There is also at present no evidence that windfall developments outside the Stodmarsh affected area are coming forward at a higher rate to make up the difference.
- 5.15 From an initial review of the Council's small site windfalls (Table A8), at least 95 sites (totalling 198 units) may fall within the Stodmarsh affected area<sup>8</sup> out of 365 total permissions: equating to 26% of permissions and 29% of the small site units. The vast majority are sites with a detailed permission so are unaffected by the Stodmarsh issue. Only five of the 95 sites total have an outline permission (totalling 15-units).
- 5.16 While it would be expected that these sites will come forward in the initial years of the five-year period, new permissions will be unable to come forward to replace them. If a similar proportion of permissions don't come forward to the current number of small sites in the Stodmarsh affected area (i.e. 26%) the Windfall allowance would fall from 350 units to 259 units: a 91-unit reduction. Even a more modest reduction of 20% (say to account for increased windfalls permissions granted outside the affected area by the Council to help make up supply) would reduce the windfall to 280 units: a 70-unit reduction.
- 5.17 On the basis of the above, it is considered a 20% reduction in future windfall rates be applied given the Stodmarsh issue is appropriate.

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<sup>8</sup> This is based a review of the site addresses as set out in Table A8

## Summary

- 5.18 In total, from our deliverability review we find that a total of 2,211 units should be removed. This is made up of a reduction of 1,991 units from Stodmarsh sites, 150 units from non-Stodmarsh sites, and 70 units from a 20% reduction in windfalls.

## 6.0 Implications

- 6.1 The Council's latest position sets out that Ashford Borough Council cannot demonstrate a five-year supply with a shortfall of 295 units. From an initial deliverability review (focusing primarily on Stodmarsh affected sites) we find the supply to be 3.31 years; a reduction of 2,211 units compared to the Council's stated position.

Table 6.1 Lichfields Concluded Ashford Borough Council's 5YHLS Position

	Ashford Borough Council Position	Lichfields Position (from a focused review)
Annual Requirement	888 dpa	888 dpa
Five Year Requirement	4,440 units	4,440 units
Backlog	2,612 units	2,612 units
Buffer	5%	5%
Total Five-Year Requirement	7,405	7,405
Total Deliverable Supply	7,110	4,899 (-2,211 units)
<b>Housing Supply (Years)</b>	<b>4.80 Years</b>	<b>3.31 Years</b> (-1.49 years)
<b>Shortfall / Surplus</b>	<b>-295 units</b>	<b>-2,506 units</b>

Source: Ashford Borough Council 'Five Year Housing Land Supply Update' (July 2020), Lichfields analysis

- 6.2 This is the position from an initial review of principally sites affected by Stodmarsh. Were a full review of other non-Stodmarsh affected sites be undertaken, Ashford Borough Council's supply position may well be eroded further. Therefore, it is concluded the above position represents a cautious position; the Council's position may be even worse, with obvious issues for deliverability of sites within Ashford Borough over the short-to-medium term.

### Implications of the shortfall identified

- 6.3 The presence or not of a 5YHLS is a material consideration for the determination of planning applications involving the provision of housing. The lack of a 5YHLS is one factor that engages the tilted balance of NPPF Para 11(d), whilst the supply position is also material to the degree of weight that should be given to the provision of new homes.

#### Engaging NPPF para 11(d)

- 6.4 NPPF Para 11(d) sets out that for decision taking, where the policies which are most important for determining the application are out-of-date (including by virtue of there not be an demonstrable 5YHLS), permission should be granted unless (i) policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (the often called 'tilted balance').
- 6.5 In this case the Council acknowledges it can only demonstrate a 4.80-year supply based on its own figures. 5YHLS and how it engages Para 11(d) is binary; either a 5YHLS exists (and as such Para 11(d) is not engaged via this route, albeit it can be by other means which render policies out-of-date) or it does not exist, and Para 11(d) is engaged. Of course, there is no debate about whether Para 11(d) is engaged in this case given the Council's own position is below five-years.

## Significance to the degree of shortfall

- 6.6 Notwithstanding the binary nature of engaging NPPF Para 11(d), the scale of any 5YHLS is also material and will impact on the weight to be attached to the matters and elements to be weighed in the tilted planning balance; it is therefore considered necessary to address, at least in broad terms, the scale of shortfall. That is also consistent with the approach set out in the recent high court judgment *Gladman v SoS Housing Communities and Local Government [2019] EWHC 128*,<sup>9</sup> whereby Justice Dove concluded (Para 26) “*in the event of there being a shortfall in the housing land supply, by and large it will be necessary for the decision maker to engage at least in broad terms what the extent of that shortfall is.*”
- 6.7 In essence, the greater the degree of shortfall, the greater weight the shortfall must be given in the balancing exercise. As aforementioned the Council considers its 5YHLS shortfall to be 0.20 years. However, from our review we find the shortfall to be 1.69-years supply (equivalent to 2,506 homes). In respect of determining the weight of the shortfall some appeal decisions give some sense of the weight that can be attached to the severity of the shortfall:
- **Land at Higher Blandford Road, Shaftesbury (ref. 3223984) (LPA: North Dorset):** A 3.3-year supply is identified which the Inspector describes a “*significant shortfall*” (IR 37);
  - **Land to the North of Wicken Road, Newport (ref. 3223694) (LPA: Uttlesford):** A 3.29-year supply is identified which the Inspector describes a “*significant shortfall*” (IR 69);
  - **Land at Clavering Walk (ref. 3234340) (LPA: Rother):** It is agreed that the Council could only demonstrate a 3.73-year supply. The Inspector states “*This amounts to an acute shortage now*” (IR 94); and
  - **Horseshoe House, 119 Westgate Road (ref. 3230500) (LPA: North Lincolnshire):** A supply ‘towards 3.39 years’ is identified. The Inspector states “*This represents a marked shortfall against the 5 year requirement under the Framework. The HDT results do not alter my view*” (IR 42).
  - **Land West of Winterfield Lane, East Malling (ref: 3256877) (LPA: Tonbridge & Malling):** The inspector concluded a 2.2-year supply could be demonstrated which was described as ‘substantial’.
- 6.8 Overall, the shortfall should be afforded more than significant weight in the determination of this planning application given its scale.

## Benefits of the provision of new homes

- 6.9 It is a Government priority to boost the supply of new homes. There is a national housing crisis to be addressed, with areas across England having high affordability ratios: in the case of Ashford Borough the ratio is 9.39 in 2019: this is above the national average of 7.83. The imperative need to boost significantly the supply of housing has been described repeatedly by Government, including in the Housing White Paper ‘Fixing our Broken Housing Market’ (Feb 2017)<sup>10</sup>, the Governments ‘Planning for the right homes in the right places’ consultation

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<sup>9</sup> Gladman Development Ltd v Secretary of State of Housing Communities And Local Government & Anor [2019] EWHC 128 (Admin) (29 January 2019) - <https://www.bailii.org/ew/cases/EWHC/Admin/2019/128.html>

<sup>10</sup> Fixing our broken housing market (February 2017) -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590464/Fixing\\_our\\_broken\\_housing\\_market\\_-\\_print\\_ready\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf)

(September 2017)<sup>11</sup> and Government's Technical consultation on updates to national planning policy and guidance (October 2018)<sup>12</sup>. The more recent 'Planning for the Future' white paper<sup>13</sup> (August 2020) reinforces Government's call to increase housing supply to the target of 300,000 per annum. The supply of new homes is a therefore a substantial requirement if Government is to achieve its aims.

- 6.10 In general, additional housing in Ashford Borough will therefore contribute to improving housing supply and aid reducing the current shortfall. Importantly, this is a site outside the Stodmarsh affected area so can help make up for lost delivery until such time as a strategic solution is implemented. Even if a solution is found in the shorter term, there will still be a scar of low levels of newly permissioned sites. This combined with the effects of the COVID-19 pandemic will result in depressed completions across the five-year period. The provision of new homes should therefore be given significant weight in the planning balance, particularly in the context of the scale of shortfall, the Stodmarsh/COVID-19 scar to future supply, and the national imperative to deliver more homes.

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<sup>11</sup> Planning for the right homes in the right places: consultation proposals, DCLG  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652888/Planning\\_for\\_Home\\_s\\_Consultation\\_Document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652888/Planning_for_Home_s_Consultation_Document.pdf)

<sup>12</sup> Technical consultation on updates to national planning policy and guidance  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751810/LHN\\_Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751810/LHN_Consultation.pdf)

<sup>13</sup> <https://www.gov.uk/government/consultations/planning-for-the-future>

## 7.0 Conclusions

- 7.1 This report has set out an initial review of Ashford Borough Council's latest 5YHLS position (July 2020) on behalf of Wates Development Limited. This is in relation to a revised application for a development at 'between Woodchurch Road and Appledore Road, Tenterden'. The development would comprise of up to 145 dwellings.

**Whilst the Council acknowledges that it can only demonstrate a 4.80-year supply, based on upon our review of the evidence, the Council can in fact only demonstrate a 3.31-year supply. This is principally given the ongoing Stodmarsh issue for which there is no strategic solution at present; stalling development within the affected area.**

- 7.2 Our review – focusing mainly on sites affected by the Stodmarsh issue – has found that the Council's supply is only 3.31-years. This is a reduction of 2,211 units and a shortfall against the five-year requirement of 2,506 units. Arguably, the position could be lower than this as this initial review has not undertaken a detailed deliverability review of non-Stodmarsh affected sites.

**The degree of shortfall is more than significant and as such the significance of the provision of homes is evidently enhanced.**

- 7.3 The degree of shortfall is clearly material and should be considered in the planning balance. In broad terms, the greater the degree of shortfall, the greater weight the shortfall must be given in the balancing exercise. The degree of 5YHLS shortfall in Ashford Borough is clearly significant, equivalent to 2,506 units.

**There are significant benefits of the provision of new homes in Ashford and this scheme will help contribute to addressing the current shortfall in housing supply and the expected lack of delivery until a strategic solution can be found for the Stodmarsh issue.**

- 7.4 It is a Government priority to boost the supply of new homes. There is a national housing crisis to be addressed linked to the affordability of homes: in the case of Ashford Borough the ratio of median house prices to earning is 9.39 (in 2019). In general, the supply of new homes is a substantial benefit to Government achieving its aims.

- 7.5 Importantly, this is a site outside the effected Stodmarsh area and development is urgently needed to make up for what will be a significant period with depressed delivery within the affected area. Even if a solution is found in the shorter-term – which at this stage appears unlikely – it will already have resulted in a lack of new permissioned sites. This in combination with the impacts of COVID-19 will clearly scar the Council's supply, with depressed delivery across the five-year period. The delivery of new homes should therefore be given significant weight in the balance, particularly in the context of both the Council failing the latest Housing Delivery Test (with a measurement of 90%) and the scale of shortfall identified, and the ongoing Stodmarsh issue. Unless new permissions are granted now, an updated five-year supply position is likely to show a significantly worse position than currently presented.





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