

Proof of Evidence of Martin Taylor B.Sc. (Hons) MSc MRPTI MIED

Land between Woodchurch Road and Appledore Road

Appellant: Wates Developments Limited

Planning Inspectorate No. Appeal: APP/E2205/W/21/3284479

Ashford Borough Council Application No. 21/00790/AS

January 2022

LICHFIELDS

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Declaration

The evidence which I have prepared and provide for this appeal (APP/E2205/W/21/3284479) in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

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1.0 Qualifications and Experience

- 1.1 My name is Martin Taylor. I am a Planning Director of Lichfields and joined the company in 2007. I hold a Bachelor of Science degree in Land Management and a Master of Science degree in Urban Planning and Development, both from the University of Reading. I am a Member of the Royal Town Planning Institute (MRTPI) and of the Institute of Economic Development (MIED).
- 1.2 Lichfields is one of the UK's largest independent planning consultancies – founded 60 years ago – with over 200 staff and was RTPI Planning Consultancy of the Year for three successive years (2011-12/12-13/13-14).
- 1.3 I have extensive experience of advising on housing matters including preparing housing need assessments, housing market analysis (for both market and affordable housing) and housing supply assessments. This has included undertaking Strategic Housing Market Assessments (SHMAs) on behalf of Local Planning Authorities, including Canterbury and East Hampshire, to inform plan making processes, and undertaking Strategic Housing Land Availability Assessments (SHLAAs) including on behalf of Epping Forest and Southend and Rochford.
- 1.4 I have also advised developers on matters related to development needs, land supply and planning for housing sites. In the context of my evidence to this appeal, I have extensive experience advising a range of local authorities and developers on matters related to housing need and five-year housing land supply (5YHLS). I have provided expert evidence on housing matters on many occasions, including at appeals in West Oxfordshire, Eastleigh, Ryedale, Canterbury, Braintree, and Broadland.
- 1.5 I set out a summary of my experience at Appendix 1.

2.0 Introduction and Scope

2.1 This proof of evidence relates to the appeal submitted by ‘Wates Development Limited’ (“the Appellant”) against the refusal of planning permission by Ashford Borough Council (“the Council”) for a development at ‘Land between Woodchurch Road and, Appledore Road, Tenterden’ (“the Site”).

2.2 The scope of my evidence relates to five-year housing land supply (5YHLS).

2.3 It should be read alongside the evidence of Mr Asher Ross – of Wates Development Limited – who provides evidence on planning matters more generally including the overall planning balance exercise and the weight to be attached to material considerations.

Structure of my evidence

2.4 My evidence is set out as follows:

- **Section 3.0** provides an overview of relevant policy and guidance associated with reviewing 5YHLS and sets out the Council’s current 5YHLS position
- **Section 4.0** provides my review of the Council’s deliverable supply (including the specific issues associated with delivery in the Borough) and summarises my findings on the Council’s latest position;
- **Section 5.0** sets out my conclusions and can be read as a summary of this proof of evidence.

3.0 **Five-Year Land Supply: Ashford Borough Council**

- 3.1 It is common ground that Ashford Borough Council cannot currently demonstrate a five-year housing land supply as required by NPPF paragraph 74. However, the scale of shortfall is relevant to the consideration of these appeal proposals and the planning balance exercise required.
- 3.2 As part of the application submission, Lichfields prepared a 'Five Year Land Supply Report' (dated April 2021) (CD 1.5) that considered the Council's then latest 5YHLS position published in November 2020 (dated July 2020) (CD 2.9a). The Council in that report concluded it could not demonstrate a 5YHLS indicating the position at that point was 4.8 years for the five year period 2020-2025¹. However, the Lichfields report concluded that the position was 3.31 years, representing a shortfall much greater than the Council had presented.
- 3.3 Subsequently, in November 2021, the Council published an updated position, 'Five Year Housing Land Supply Update July 2021 - 2021-2026' (CD 2.9b). In this report the Council concludes it can only demonstrate a 4.54 year supply for the five year period 2021-2026; an overall worse position than concluded in the previous iteration, but still above that concluded by the Lichfields report.
- 3.4 In the context of the above, my evidence provides a review of the current five year housing land supply position in Ashford. It draws on the findings in the earlier Lichfields 5YHLS report (CD 1.5) (which I helped prepare), but primarily considers the Council's 'July 2021' position, demonstrating that the shortfall in the Council's 5YHLS is greater than presented. To aid the inquiry, in conjunction with the Council I will prepare a 'Scott Schedule' of sites in dispute and seek to agree and reduce those sites in dispute with the Council by

¹ See Table 2 (CD 2.9a)

the time of the inquiry. This will build on my deliverability review at Appendix 2 to my Proof.

Relevant policy and guidance

Development plan

- 3.5 The 'Ashford Local Plan' (2011-2030), adopted February 2019, sets out the vision, objectives and strategy for the development of the Borough up to 2030. Policy SP2 sets out the relevant housing requirement of 13,118 net additional dwellings between 2018 and 2030. The policy clarifies that this is made up of an annual OAN of 888 dwellings per annum (dpa) plus 352 dpa of past shortfall to be added to the annualised OAN requirement for the first seven years of the plan (i.e. a target of 1,240 dpa for 2018/19 to 2024/25 and then a target of 888dpa thereafter).

National Planning Policy Framework (2021)

- 3.6 The NPPF (2021) states that the presumption in favour of sustainable development should be at the heart of plan-making and decision-taking. For decision-taking, Paragraph 11 of the NPPF is clear that this means approving development proposals that accord with an up-to-date plan or, in instances where relevant policies are out-of-date, including where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites, granting permission unless policies within the NPPF provide a clear reason for refusal or the adverse impacts of approving development would significantly and demonstrably outweigh the benefits.
- 3.7 The NPPF at Paragraph 74 goes on to state 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..." (paragraph 74)*

Deliverability

3.8 To ‘demonstrate’ a 5YHLS, NPPF (2021) Paragraph 74 requires Local Planning Authorities to identify a supply of specific ‘deliverable’ sites sufficient to meet five-years’ worth of housing (in this case 7,195 units as set out below). The NPPF (2021) (consistent with the previous NPPF 2019 definition) defines a ‘deliverable’ site as (Annex 2, page 66):

“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.” (my emphasis)

3.9 The Lichfields 5YHLS report (CD 1.5) sets out a full review of policy and guidance; and I provide at Appendix 3 a broader review drawing upon this. However, the following is most relevant:

- The definition of deliverable (set out above) is not exhaustive on what types of site can be deliverable. 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 years².

- The PPG (ID: 68-007) sets out further guidance on what constitutes a ‘deliverable’ site in the context of decision-taking and the types of evidence required to demonstrate deliverability (i.e. ‘clear evidence’). However, again this is not an exhaustive list.

My interpretation of policy and guidance

3.10 In respect of my interpretation of policy and guidance the key points are (building on the Lichfields 5YHLS report (CD 1.5)³):

- 1 **‘Category A’** sites are those listed in the (a) paragraph of the definition of ‘deliverable’ and have a detailed planning permission. 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’).
- 2 **‘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 a Local Planning Authority 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 realistic⁴.
- 3 Given there is no exhaustive definition of ‘clear evidence’, it is ultimately a matter of planning judgement as to whether clear evidence is provided.

² In accordance with the Secretary of States interpretation; 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> (Appendix 4)

³ See Paragraphs 4.5 to 4.8 of the report.

⁴ Halstead Hall Appeal ref. 3236460 (IR65-68) (Appendix 5)

From a review of appeal precedent, I consider the below to be the key points of reference for reviewing any ‘clear evidence’ provided:

- a **Deliverability is determined on the content and value of the evidence: not simply the fact that evidence itself has been provided.**

As confirmed by the ‘Popes Lane’ decision⁵, it is the evidential value of the evidence gathered that demonstrates that a development’s prospects of delivery are realistic; forming ‘clear evidence’. The value of any site-specific evidence is itself dependant on the site’s context and the specific circumstances of that site⁶.

- b **While there is no minimum criterion for clear evidence⁷, the type and form of ‘clear evidence’ for Category B sites will vary depending on circumstances of the site (e.g. its size or how quickly it is expected to deliver).**

By way of example, the type and form of evidence that could be considered robust to demonstrate a ‘realistic prospect’ for a hypothetical Category (B) site that has outline permission for 50 units and has a reserved matters application pending consideration with an assumed output in line with local lead-in times/build rates will be markedly different to that required for either a large-scale strategic site for 1,500 units that has an allocation but no extant outline permission, or a site that is assumed to be building out sooner and/or more quickly than has typically been the case for comparable sites in the district or elsewhere.

Evidence can also take account of information gathered after the base date (in this case 1st April 2020) as long as it is used to support sites

⁵ Popes Lane Appeal ref. 3216104 (IR 23) (Appendix 6)

⁶ Confirmed in both the ‘Popes Lane’ (ref. 3216104 - IR 23) (Appendix 6) and ‘Rectory Farm’ (ref. 3234204 - IR 32) (Appendix 7) decisions

⁷ Land to the South of Williamsfield Road (ref. 3207411 - IR 27) (Appendix 8)

identified as deliverable as of the base date⁸. However, to ensure consistency in the approach to assessing a five-year supply new sites should not be added into the supply of an existing position; instead new sites should only be added once a new position with an updated base date is published.

c Local Planning Authorities should undertake a critical analysis of whatever evidence is gathered from developers.

In the ‘Rectory Farm’ decision⁹ the Inspector noted that the Council did not simply accept the proforma returns from developers on face-value. Where the Council thought the rates overly ambitious, the rates were altered. This demonstration of critical judgement appeared to give additional weight to the Council’s findings. Another Inspector in the earlier ‘Land to the south of Williamsfield Road’ decision¹⁰ echoed these comments.

3.11 Overall, it is incumbent upon the Local Planning Authority to demonstrate the five year land supply position and to do that with sufficient clarity and evidence to back-up any judgement or assessment made of whether, when and how quickly any site will reasonably deliver new homes.

The Council’s latest 5YHLS position

3.12 The Council’s latest 5YHLS position (CD 2.9b) was published in November 2021. The report – dated July 2021 – reviews the Council’s five-year requirement and deliverable supply over the five-year period 2021 to 2025. It is unclear from the report (paragraphs 1.1-1.6) precisely which dates it covers. Paragraph 1.4 appears to suggest it covers the five year period 1st July 2021 to 31st June 2026, but equally states it is based upon completions in the monitoring year to 31st March 2021, meaning if it were to cover July 2021 to

⁸ As the Secretary of State confirmed in the ‘Woburn Sands’ decision (ref. 3169314 - DL 12) (Appendix X) and again in the ‘Land at Mitchelswood Farm’ decision (ref. 3119171 - IR9.61-9.62) (Appendix X)

⁹ Rectory Farm Appeal ref. 3234204 (IR 32) (Appendix 7)

¹⁰ Williamsfield Road Appeal ref. 3207411 (IR 27) (Appendix 8)

June 2026, three months of accruing housing target and housing completions (i.e. 1st April 2021 to 31st June 2021) are entirely absent from the Council’s calculations. I believe what is actually presented is a calculation for the five-year period 1st April 2021 to 31st March 2026.

3.13 A summary of the Council’s position is set out below showing a shortfall of 664 homes in the relevant period equating to a 4.54-year supply.

Table 3.1 Ashford Borough Council’s Stated 5YHLS Position

	Ashford Borough Council’s Position
Base Annual Requirement	888 dpa
Five Year Requirement	4,440 Homes
Backlog (pre and post-Local Plan adoption)	2,412 Homes
Buffer	5%
Total Five-Year Requirement	7,195 Homes
Total Deliverable Supply	6,531 Homes
Housing Supply	4.54 Years
Shortfall / Surplus	-664 Homes

Source: Ashford Borough Council ‘Five Year Housing Land Supply Update’ (July 2021) (CD 2.9b)

3.14 In respect of the total five-year requirement I agree that it is 7,195 units in the relevant five-year period based on the annual housing requirement (derived from the adopted Local Plan), the backlog of supply accrued, and the relevant 5% buffer. However, I disagree with the Council’s purported ‘deliverable’ supply (as set out below).

3.15 It is also relevant to note that in each of the first three monitoring years of the Local Plan (i.e. since 2018/19), the Borough has failed to deliver the target number of homes required by Policy SP2. This is illustrated in Table 3.2 which shows delivery has thus far fallen well short of the 1,240 homes per annum annual housing target to 2024/25 set out within Policy SP2.

Table 3.2 Delivery Against Policy SP2 Target

	2018/19	2019/20	2020/21
Annual SP2 Target	1,240	1,240	1,240
Delivery	880	746	1,088
Shortfall	-360	-494	-152

Source: Ashford Borough Council AMR / Local Plan Policy SP2

3.16 Furthermore, delivery against the housing trajectory set out within Ashford Borough Local Plan has fallen well short of expectations, as illustrated in Table 3.3. Whilst there are reasons as to why some degree of shortfall might be expected when accounting for the impact of Covid-19, the scale of shortfall and its persistence are far beyond what would solely be attributable to lockdowns and the closure of building sites in 2020, indicating that the Council has been somewhat over-optimistic in its anticipation of delivery.

Table 3.3 Delivery Against ABC Local Plan Housing Trajectory

	2018/19	2019/20	2020/21
ABLP Housing Trajectory (Appendix 5 of CD2.1)	1,018	1,501	1,859
Delivery	880	746	1,088
Shortfall Against Expectation	-138	-755	-771

Source: Ashford Borough Local Plan (CD2.1) Appendix 5 - The Housing Trajectory

3.17 In this context, I do not agree with the Council’s position (CD 7.2, ABC Statement of Case paragraph 21.1.3) that *“the most recently published Five Year Housing Land Supply Position Statement (November 2021) indicates that it [the Council] has significantly ‘over-provided’ housing over the course of the last year”*. It has not. 1,088 homes completed in 2020/21 is below both what it was required to do by Policy SP2 and what it was estimating it would do.

4.0 **Reviewing the Deliverable Supply**

4.1 In the context of my above (Section 3.0) consideration of the policy and guidance surrounding five year housing land supply and the Council's published position, I below review the deliverable supply.

The Council's record of projecting supply

4.2 At the outset it should be noted that the Council does not have a good track-record of successfully projecting its future housing land supply. As set out above in Table 3.3, the Council is already significantly behind where its overall housing trajectory anticipated it would be at this point. In the first three years of the plan the Council has delivered 1,664 fewer homes than it was anticipating in the Local Plan trajectory.

4.3 Indeed, turning to some of the individual sites, and tracking through what was forecast to occur in each annual iteration of the Council's projected supply, indicates that the Council is consistently over-optimistic on what will occur and how quickly. Table 4.1 compares five sample sites of different scales and in different parts of the Borough. It simply reports what delivery was projected within the relevant five year period (indicated by grey shading) in each of the last four periods reported by Ashford Borough Council. It illustrates how, since the initial Housing Topic Paper (CD 2.20) trajectory delivery, many sites have simply just been pushed back a year, each year, by the Council with continued reliance on the sites delivering in the five year period; often with no more 'clear evidence' on timings provided.

4.4 To put it another way, five years ago in 2017, Ashford Borough Council indicated Court Lodge would deliver homes in years four and five of its five-year period (2020/21 and 2021/22 respectively). Today Ashford Borough Council is indicating Court Lodge will deliver those same homes now in years four and five of its five-year period year (2024/25 and 2025/26). The 2017 position has been proven to be hugely over-optimistic and a fundamentally

unreliable projection of what would happen. Indeed the 2017 position assumed collectively the below five sample sites would be delivering 1,960 homes in the current five year period 2021/22-2025/26, the most recent position is now assuming only 871 homes.

Table 4.1 Comparing projected site delivery over time

Site	Report/Source	Supply Years								
		2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
Elwick Rd Phase 2	HTP Dec 2017					100	100			
	ALP Feb 2019					100	100			
	5YHLS July 2020						100	100		
	5YHLS July 2021								100	100
Chilmington Green	HTP Dec 2017		50	150	200	200	200	200	200	200
	ALP 2019		50	150	200	200	200	200	200	250
	5YHLS July 2020			75	325					
	5YHLS July 2021			75	74	251				
	Actual		0	75	74					
Court Lodge, Kingsnorth (S3)	HTP Dec 2017				50	90	90	90	90	100
	ALP Feb 2019					50	90	110	110	110
	5YHLS July 2020							40	90	110
	5YHLS July 2021								40	90
Tent 1B (S24)	HTP Dec 2017					70	80	75		
	ALP Feb 2019					70	80	75		
	5YHLS July 2020							70	80	75
	5YHLS July 2021								70	80
Charing – Land adjacent to Poppyfields (S55)	HTP Dec 2017			30	75	75				
	ALP Feb 2019			30	75	75				
	5YHLS July 2020					45	45	45	45	
	5YHLS July 2021								70	70

Source: ABC Housing Topic Paper, Dec 2017 (CD 2.20), Adopted Ashford Local Plan, Feb 2019 (CD 2.1), Ashford 5YHLS July 2020 (CD 1.9a), Ashford 5YHLS Update July 2021 (CD1.9b)

4.5 This issue is compounded in the most recent 5 year housing land supply update (CD1.9b) as the Council in its supporting information largely does not present any ‘clear evidence’, beyond a short commentary on each site, to indicate why its projected delivery is reasonable and grounded in credible evidence of what will occur for that site. It also, in many cases, doesn’t provide a timetable or phasing of delivery, showing when critical items will be complete (e.g. when an application will be submitted, then granted, when pre-

commencement conditions will be cleared, when building will commence, how long it will then take for first homes to be completed etc.). It simply states how many will be completed in the five year period (not when or how quickly).

This, in my view, belies the robustness of the projected supply.

- 4.6 Indeed, this view has been made in Ashford District before. The appeal Inspector on the Tilden Gill proposal in Tenterden noted at paragraph 66 of his report (CD6.3) that *“Without endorsing each and every criticism of the Council’s calculations made by the appellant, it is clear that the Council has a sufficiently poor record of predicting delivery for me not to rely upon the predictions submitted to this Inquiry...”*. Although of its time in 2016, having reviewed the Council’s recent positions, I still consider this broad criticism remains. There is very little information or evidence supporting the Council’s five year housing land supply position to justify it as a credible view of what is genuinely deliverable by the 2025/26 time-horizon.

The ‘Stodmarsh issue’ and implications for deliverability

- 4.7 The Lichfields 5YHLS report (CD 1.5) provides an overview of the ‘Stodmarsh issue’ following advice Natural England issued to the Council in July 2020 and updated November 2020 (Appendix 11). This affects a number of Local Planning Authorities in Kent including Ashford, Dover, and Canterbury. It fundamentally affects, and goes to the heart of, the ‘deliverability’ of sites in the context of the five-year land supply and the definitions contained within the NPPF.
- 4.8 The key implication of the ‘Stodmarsh issue’ is that the Council is unable to grant planning permission for new housing development within the Stour Catchment unless the proposal can show it will achieve ‘nutrient neutrality’ (in respect of both phosphorus and nitrogen). The Council has published guidance

on calculating nutrients generated and how it can be mitigated including options on-site or off-site such as¹¹:

- The provision of wetlands which need to be at least 2ha in size and have a permanent input of water, with detailed design accompanying the planning application;
- Provision of on-site Wastewater Treatment Works, with potential planned upgrades to existing Wastewater Treatment Works providing opportunities to address phosphorus impacts (but not expected to be implemented until 2023/24 and then on a phased basis from 2025-30); and
- Removal of land from agricultural use to offset overall nutrients released from development.

4.9 This issue affects the whole of the urban area of the town of Ashford and nearly all of the Borough north east of the M20 (and some land also to the south west of the M20). The current position is succinctly outlined in the briefing note of 25th November 2021 authored by Simon Thomas, Head of Planning at Canterbury City Council and presented to the Kent & Medway Economic Partnership (the ‘KMEP paper’, see Appendix 14 to this proof). This outlines the various measures being taken, both at a site specific level but also at a strategic cross-boundary scale, where a strategic wetland solution is being pursued. It highlights the difficulties and challenges currently present.

4.10 In the year since Natural England issued its advice to the Council, the Council has only taken the ‘first steps’ towards mitigating the issue in the Borough; as set out in a July 2021 update¹². At that point The Cabinet agreed that *“land acquisition options for new wetland areas should now be explored and pursued as a matter of urgency”* with the intention that this would allow the implementation of a borough-wide mitigation scheme, whereby the Council

11 <https://www.ashford.gov.uk/planning-and-development/planning-applications/making-planning-applications/habitat-regulations-assessment/nutrient-neutrality-information-for-developers/> (Appendix 12)

12 <https://www.ashford.gov.uk/news/latest-news/wetland-scheme-to-mitigate-effects-of-new-housing-developments/> (Appendix 13)

provides wetland mitigation and individual sites and applications could buy-in credits (or equivalent) to allow developments to proceed. The latest Corporate Performance Report presented to Cabinet on 25th November simply reiterates the July position. In summary, this means some sites may be able to proceed with on-site or in-built solutions (e.g. on-site wetland provision) whilst others will necessarily need to await the borough-wide mitigation scheme (e.g. brownfield sites or smaller sites where on-site options are not feasible). Even once planning permission is granted, on-site or off-site wetlands and other measures will take time to establish before homes can be built¹³.

4.11 The Council in its five year housing land supply update 2021-2026 sets out (para 3.41) that for the first time the impact of the Stodmarsh on the Council's housing delivery has been factored in. It sets out in the accompanying schedules that around 2,310 homes within the deliverable supply is affected by the Stodmarsh issue (35%). It sets out at page 11 a timeline for the Borough mitigation Strategy which would see wetlands fully operational by Autumn 2024. This would notionally allow only c.16 months' worth of housing delivery from sites (i.e. 1st December 2024 to 31st March 2026) at best. However, even then:

- 1 It requires land acquisition of suitable mitigation sites to have already been undertaken by early 2022 (and in sufficient scale to unlock the whole backlog of planning permissions not currently granted – likely needing upwards of 20-30ha land in suitable wetland locations immediately¹⁴).

13 N.b. The Council indicates that it can grant planning permissions once it can be linked to the deliverability, maintenance and monitoring of the secured mitigation (e.g. wetlands) and that Grampian conditions will be used to restrict occupations until mitigation is operational, but that the SYHLS refer to completions rather than occupations. In my view, the reality is there is no distinction between occupations and completions; no rational housebuilder will build homes to completion it cannot immediately sell due to an occupation restriction. That would be a too great a risk. A housebuilder would need to be absolutely certain any Grampian condition can be discharged at the appropriate time, before it builds/completes any new home; they will build in time to any construction programme to allow for that.

14 Based on an assumption that wetlands "which can create headroom for several hundred homes per hectare" as set out within the KMEP paper (Appendix 14 para 3.16), but that this will need to be done for all homes on permissions (not just the 'deliverable' components) and will need to be done cross-district too (e.g. including Canterbury).

- 2 It will require wetland planning permission to be sought, granted and under construction by Autumn 2022.
- 3 The initial costs of 1) and 2) are reported in the KMEP paper as being “*significant*” (paras 4.4-4.6) with a request to Government for funding from the Councils (see Appendix 14) requesting upwards of £5m for implementing the nitrates credits system (alongside £20m for on-site wastewater treatment works). To date there is no clear evidence funding has actually been secured; the KEMP paper indicates a response has not been received from Government.
- 4 Sites will need to factor in any viability implications of needing to buy-in credits (or deliver alternative mitigation) and the consequent impacts this may have on granting planning permissions. Developers are unlikely to be pressing for decisions until the costs to them and consequent impacts on scheme viability are known. Similarly, any achievable on-site mitigation (e.g. creation of minimum sized 2ha wetlands on-site, or provision of on-site wastewater treatment works with applicable buffer areas to new homes) will potentially reduce the land available for delivering homes on those sites, so may reduce the overall deliverable number of homes.
- 5 The Borough-wide mitigation strategy will need to be continually ‘scaled-up’ to allow for future planning applications to be granted on a basis that phases with the ‘credits’ being created (i.e. if there is a delay to delivery of wetlands, the ‘credits’ cannot be generated, and development cannot be permitted).

4.12 In this context, the timescales for delivery of the Borough-wide mitigation strategy appear wholly unrealistic. The Council provide no breakdown, route-map or justification of how the Autumn 2024 completion date will be delivered. In my view the degree of complexity, the lack of clarity and the scale of risks, all point to this date not being met. Indeed, if the timescale is not met, the delivery of sites will necessarily be further delayed.

Deliverability of stodmarsh sites

- 4.13 Considering deliverability, this issue only affects sites without a detailed permission; those that already have a detailed permission can commence. Therefore, Category A sites are mainly unaffected by the issue. The key implications of this issue for the assessment of 5YHLS are for Category B sites which do not have a detailed permission and may be allocations.
- 4.14 These sites, in my view, can no longer be assumed to be 'suitable now' as they may not be able to demonstrate nutrient neutrality as a result of on-site mitigation to enable planning permission to be granted. Consequently, these sites are now inherently undeliverable without 'clear evidence' that nutrient neutrality can be achieved (and planning permission granted) including clear evidence on the timescales and phasing for the implementation of that mitigation. 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 in a suitable location for growth now and provide clear evidence that there is a realistic prospect of delivery within the five year period.
- 4.15 Arguably, the proposed Boroughwide strategic solution, or individual site-specific mitigation strategies, could be delivered in the short to medium term that will enable sites to deliver in the five-year period. However, the Council has not yet the provided any such clear evidence to demonstrate that it could realistically be delivered, in the timescales envisaged, and with the phasing to release homes for development. 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.
- 4.16 The 'clear evidence' I would expect to be able to support a conclusion that such a site is 'deliverable' would for example include:

- 1 Clarity on the precise mitigation proposed relating to each site, including locations (i.e. which wetland site will provide the off-setting or credits) and how far along towards delivery it is. Until that point, it is not possible to say whether a site has ‘clear evidence’ it is deliverable within five years;
- 2 How that mitigation relates to cumulative impacts and the phasing of mitigation. At least for the short-term it is likely the boroughwide mitigation strategy will see a large number of new homes chasing a small number of ‘credits’, with some sites losing out and seeing delays.
- 3 Where planning applications are ongoing, confirmation or indications from statutory consultees (including Natural England) that an appropriate solution exists;
- 4 Details within the five year land supply report on how any issues of deliverability will be addressed, to include for example: a precis of relevant information from any planning application; information from the landowner/developer on progress; information on how hurdles/constraints will be addressed in a timely manner.

4.17 There is no submitted evidence to support the Council’s assumption and assertion (CD2.9b para 3.50) that “*sites waiting for the borough Mitigation Strategy, will start to deliver housing from year 3 onwards, after the implementation of the strategy*” and there is little supporting information on the wider timescales for sites. Indeed, the Council’s own timetable of Autumn 2024 would suggest sites would in-fact only start to deliver from partway through year four only (not year three onwards), but even then on a best-case scenario any phasing of development would likely only see one years’ delivery within the five year period (i.e. in year five, 2025/26, only) following establishment of the wetlands.

4.18 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 new homes. The alternative is that they accommodate mitigation on-site (or in some way separate to the borough-wide solution) with any consequent impacts on timescales, viability and/or the overall capacity of the site to accommodate new homes. I address this on a site-by-site basis within my Appendix 2.

Deliverability review: my conclusions

4.19 For the full consideration of the deliverability review of the Council's supply, 'clear evidence', and the basis of the review I draw upon Lichfields' 5YHLS report (CD 1.5). As set out in that report, the review of lead-in times and build rates was based on the findings of the Lichfields research report 'Start to Finish' (2nd Edition) published in February 2020 (Appendix 15) as no local evidence has been published. For this inquiry I have updated the review of sites where necessary with the latest position (for example confirming that there is no new evidence of demonstrating nutrient neutrality).

4.20 Appendix 2 details a summary of my review of Stodmarsh affected sites and other sites. From this review I remove between 1,297 and 2,472 units of supply (set out within two scenarios) that I consider are not deliverable.

Windfall review

4.21 Paragraph 71 of the NPPF (2021) states that:

"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends."

4.22 As detailed in the Lichfields 5YHLS report (CD 1.5), the future trends of windfall development will be affected by the Stodmarsh issue as the Council is unable to permit new small site housing permissions to replace existing ones unless the proposals are able to demonstrate 'nutrient neutrality'. As set out in

the Council's own guidance, this is a particular issue for small-scale housing proposals¹⁵.

4.23 The Council includes a 'future expected windfalls' or 'unknown windfalls' allowance of 300 homes applied within years four and five of the supply period (CD2.9b para 3.31, 3.35). The Council evidences this by reference to some sites where live planning applications exist, albeit it is worth noting that in an earlier iteration of this exercise, this Appledore Road appeal site appeared as one such 'windfall illustration' site (see CD2.9a, page 35), so it can be taken as no firm indication planning permission will actually be forthcoming for those windfalls. The Council states that the future 'unidentified windfalls' for years four and five will be able to benefit from the borough mitigation strategy (CD2.9b para 3.52) and as such will not be delayed due to Stodmarsh.

4.24 However, for the same reasons as set out for identified sites above, I consider there is not "compelling evidence" (a particularly high bar) that windfalls will fundamentally be able to come forward without delay and in the same volume. It is highly likely that some windfall sites (particularly small brownfield sites) will face significant additional costs due to the need for Stodmarsh mitigation and will see delays if the mitigation strategy is not in place on time. Even then, the Council's timescales of Autumn 2024 for mitigation being in-place would not yield two full years of windfall in years four and five, it would be c.16 months at best.

4.25 In this context, I consider a discount of at least 33% (100 units) to the 'future expected windfalls' element is fundamentally necessary and appropriate. This is on the basis that:

- At best, and adopting the Council's position on timescales, 16 months of windfall delivery (and not 24 months) would be achieved, with this likely

¹⁵ <https://www.ashford.gov.uk/news/latest-news/wetland-scheme-to-mitigate-effects-of-new-housing-developments/>

to be much less, and potentially none at all within the five year period, if delays to the Boroughwide mitigation strategy occur.

- The Council indicates 35% of the overall identified five year supply is within the Stodmarsh affected area (CD2.9a para 3.48).
- My analysis based on the Council's newest position is that this rises to 51% of the Council's granted small site windfalls (i.e. as detailed in Table A8) and 95% of the Council's major windfalls (i.e. as detailed in Table A6a).
- There is no compelling evidence that windfall sites from 'non-stodmarsh' areas are coming forward, or being granted, to replace these.

4.26 A 33% (100 unit) reduction is a proportionate and cautious reduction, reflecting that the Stodmarsh will inevitably impact the continued granting and implementation of unidentified windfall developments over the coming few years.

Conclusions on the Council's 5YHLS

4.27 Based on my updated review of the Council's latest 5YHLS position (CD 2.9b), I conclude that consistent with the April 2021 Lichfields 5YHLS report the five year housing land supply position is materially worse than presented by Ashford Borough Council. I consider two positions at Appendix 2 to my proof as follows:

- 1 One where relevant **stodmarsh sites cannot be considered to meet the definition of 'deliverable'** with no clear evidence provided by the Council that they are both suitable locations for development now and that they are achievable with a realistic prospect that housing will be delivered on the site within five years. This is on the basis, that at the current point in time the Council is unable to conclude, with clear evidence, whether or not there is a realistic prospect such sites can come forward within five years; there is significant uncertainty and clarity on the ability of wetland mitigation (both at a site level and a borough-wide scheme level) to

conclude if and when sites will come forward. As such those sites cannot fall within the definition of 'deliverable'. In this scenario 2,572 homes would be removed from the Council's deliverable supply (2,472 as in the schedule plus 100 discount on windfalls); and

- 2 One where relevant **stodmarsh sites may meet the test of being 'deliverable' but the timescales for their delivery will be inevitably delayed**, which, when considered alongside likely lead-in times and build-rates, will reduce the number of homes that have a realistic prospect of delivery within the five year period. This scenario assumes that the Council can provide clear evidence on the stodmarsh mitigation for each site, and that there is a realistic prospect it will come forward, but focusses on the likely timescales, or other factors, which will affect the delivery of homes on each site. In particular it is assumed the boroughwide mitigation strategy would, at best, be in-place to allow completions only from year five (2025/26) onwards, if all other factors would allow so on such a site. In this scenario 1,397 homes would be removed from the Council's deliverable supply (1,297 as in the schedule, plus 100 discount on windfalls).

4.28 I consider, based on my review of the position on each component of supply, a total of between 1,397 and 2,572 units should be removed from the Council's deliverable supply based on the latest available evidence. Therefore, I consider the Council can only demonstrate a supply of between 2.75 years and 3.57 years.

Table 4.2 Concluded Ashford Borough Council’s 5YHLS Position

	Ashford Borough Council Position	Scenario 1: No clear evidence to conclude stodmarsh sites ‘deliverable’	Scenario 2: Stodmarsh mitigation shown to be deliverable
Annual Requirement	888 dpa	888 dpa	888 dpa
Five Year Requirement	4,440 units	4,440 units	4,440 units
Backlog	2,412 units	2,412 units	2,412 units
Buffer	5%	5%	5%
Total Five-Year Requirement	7,195	7,195	7,195
Total Deliverable Supply	6,531	3,959	5,134
Housing Supply (Years)	4.54 Years	2.75 Years	3.57 Years
Shortfall / Surplus	-664 units	-3,236	-2,061

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

4.29 I consider, at the current point and based on the evidence provided in ABC’s most recent 5 year housing land supply position, that Scenario 1 (2.75 years) is the more robust position and better reflects the definition of ‘deliverable’ provided within the framework. However, even if appropriate Stodmarsh mitigation were to be signposted with clear evidence such that sites could be concluded to offer a suitable location for development now and with clarity on the phasing implications of mitigation for the delivery of new homes such that there is a ‘realistic prospect’ of delivery within five years; Scenario 2 (3.57 Years) still illustrates a significantly reduced five year supply from that concluded by the Council.

4.30 The implications of my conclusions, including in respect of the engagement of NPPF paragraph 11d, the weight to be attached to the degree of shortfall and the wider benefits of the supply of new homes within the planning balance are addressed in the evidence of Mr Asher Ross.

5.0 Summary and Conclusions

5.1 My evidence considers the five year housing land supply position of Ashford Borough Council. The following can be read as a summary of my proof of evidence.

It is common ground that Ashford Borough Council cannot demonstrate a five year housing land supply.

5.2 The Council concludes in its November 2021 published 'Five Year Housing Land Supply Update' (CD2.9b) that it can demonstrate a 4.54 year supply for the period 2021/22 to 2025/26. However, the scale of shortfall is relevant to the consideration of these appeal proposals and the planning balance exercise required.

Ashford Borough Council's recent housing delivery has fallen significantly short of both the housing target within Policy SP2 and the expected delivery within the Council's housing trajectory.

5.3 Ashford Borough Plan Policy SP2 sets a housing target for delivery of 1,240 homes per annum to 2024/25. The first three monitoring years of the Local Plan (i.e. since 2018/19) saw delivery of 880, 746 and 1,088 homes respectively, increasing the backlog. Cumulatively this was also a shortfall of 1,664 homes against what the Council were anticipating in their housing trajectory.

The five year requirement, taking account of policy requirement, backlog and buffer is 7,195 homes.

5.4 It is agreed that this is the relevant requirement for the forward looking five year period 1st April 2021 to 31st March 2026. It includes a 5% buffer and accounts for backlog from requisite periods both pre- and post-local plan adoption (i.e. since the 2011 start date of the Local Plan period).

The Council estimates its ‘deliverable’ supply across the five year period as 6,531 homes. However, based on the evidence available I conclude the deliverable supply is between 3,959 and 5,134 homes.

5.5 This finding is based on my review of the deliverable supply and, in summary, is concluded based on the following considerations:

- 1 The Council’s track-record of successfully projecting its future housing land supply is not good, and the Council systematically overestimates how quickly delivery will occur. Many sites are simply rolled-forward from one assessment to the next with continued promises of delivery in future years. This is compounded by the lack of required “clear evidence” which the Council presents to justify why sites are deliverable and when they will occur. I have reviewed the Council’s housing supply and made amendments to the trajectory where there is either not clear evidence, or the evidence indicates delivery will not occur as quickly within the 5-year period.
- 2 The issue of ‘Stodmarsh’ – where in a large part of the district, including Ashford, the Council is currently unable to grant planning permission unless proposals can demonstrate nutrient neutrality – is fundamental to the deliverability of those schemes it affects. The primary mitigation is through delivery of wetlands to offset nutrients in the affected area. Some sites are proposing ‘on-site’ mitigation, whilst others will need to await for the implementation of a borough-wide mitigation scheme. On both counts, the precise details, timetables, route-map, phasing for implementation and implications for sites’ housing capacities arising from that mitigation is largely unclear and unevidenced. Without such clear evidence, those schemes do not meet the NPPF definition of deliverable, as there is not sufficient evidence to show those sites are ‘suitable now’ and that there is a reasonable prospect that they can come forward at the point envisaged within the five year period.

- 3 Similarly, the impact of Stodmarsh on windfalls will inevitably impact the continued granting and implementation of unidentified windfall developments over the coming few years with a proportionate (33%, 100 home) reduction applied.

My review of the Council's deliverable supply leads me to conclude the Council can only demonstrate a supply of between 2.75 years and 3.57 years.

5.6 I present two scenarios:

- 1 One where relevant **stodmarsh sites cannot be considered to meet the definition of 'deliverable'** with no clear evidence provided by the Council that they are both suitable locations for development now and that they are achievable with a realistic prospect that housing will be delivered on the site within five years. This results in a reduction in supply which can meet the definition of 'deliverable' by 2,572 homes and a consequent five year land supply position of 2.75 years.
- 2 One where relevant **stodmarsh sites may meet the test of being 'deliverable' but the timescales for their delivery will be inevitably delayed**, which, when considered alongside likely lead-in times and build-rates, will reduce the number of homes that have a realistic prospect of delivery within the five year period. This results in a reduction in deliverable supply by 1,397 homes and a consequent five year land supply position of 3.57 years.

5.7 Both illustrate a significantly reduced five year supply from that concluded by the Council.

The shortfall in housing delivery and the five year housing land supply are clearly material and significant.

5.8 The implications of my conclusions, including in respect of the engagement of NPPF paragraph 11d, the weight to be attached to the degree of shortfall and

the wider benefits of the supply of new homes within the planning balance are addressed in the evidence of Mr Asher Ross.