

Your ref: NA
Our ref: 0364/TR
26th August 2020

Malvern Hills District Council
The Council House,
Avenue Road,
Malvern,
Worcs.
WR14 3AF

F.A.O. Reiss Sadler

By email only: Reiss.Sadler@wychavon.gov.uk

Dear Reiss,

MALVERN HILLS DISTRICT COUNCIL APRIL 2020 FIVE YEAR HOUSING LAND SUPPLY

In accordance with my instructions, I have set out below my conclusions on your April 2020 Five Year Housing Land Supply Report for Malvern Hills District (excluding the Wider Worcester Area) with reference, where appropriate, to the fourteen headings set out therein.

I note the acknowledgement in your introduction (paragraph 1.2) of the delay to this year's site visits by approximately 8 weeks and the consequent increase in the 2019/20 period of completions and the corresponding reduction there will be for 2020/2021. Given the nature of the overall calculation, and the assumptions made below about the impact of the COVID-19 pandemic, I am in agreement that this delay should not undermine the 2020 five year supply figure for Malvern Hills District.

Housing Requirement

I am in agreement that the starting point for this year's calculation should again be the figure of 5,650 for the period 2006 to 2030 as set out in Policy SWDP 3 (Table 4b(i)) of the South Worcestershire Development Plan (SWDP) which was adopted in February 2016. This is consistent with the Government's Planning Practice Guidance which confirms that:

"Housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5 year housing land supply figure where: the plan was adopted in the last 5 years ..."

(Ref: NPPG Paragraph: 004 ID: 68-004-20190722)

The policy also makes it clear that the annual requirement rates which are set out in Table 4b(ii) for each sub-area (in this case Malvern Hills excluding the Wider Worcester Area) will apply when monitoring delivery in each sub-area and for purposes of calculating the five-year supply.

The relevant five-year target for 2020/2021 to 2024/2025, excluding any allowance for undersupply/oversupply or buffer, is therefore correctly calculated at 5 years x 217 giving **1,085** dwellings (net).

Completions

I note **417** dwelling completions have been recorded for 2019/20. This takes the total number delivered over the plan period thus far to **4,105**. This shows a tailing off from last year's record level of completions for the district but is still well in excess of the annual requirement of 217 dpa.

Calculating Past Undersupply or Oversupply

I am in agreement that the way this has been calculated, using the figure of 4,105 dwelling completions thus far, minus the cumulative annual requirements set out in the adopted SWDP (Ref: SWDP 3 Table 4b(ii)) (i.e. 9 years at 235dpa plus 3 years at 308dpa, plus 2 years at 217 giving a requirement of 3,473) is correct. This confirms a surplus in delivery over the minimum requirement to date of **632** dwellings; the equivalent of nearly 3 years annual requirement. I am also mindful that, given the number of units recorded as under construction during this year's site visits (374), which already exceeds the annual requirement of 217, this surplus will inevitably grow again this year.

Addressing Past Undersupply/Oversupply

The approach previously taken by the Council to address past undersupply was to factor all of it in over the next five year period (the so called 'Sedgefield Approach'). This was consistent with the Government's Planning Practice Guidance as it then stood, and as now revised (Paragraph: 031 Reference ID: 68-031-20190722 Revision date: 22.07.2019); and has, in any event, been invariably upheld in Planning Inspectorate appeal decisions in Malvern Hills.

There was previously no such guidance on how to factor in an oversupply to the 5 year housing land supply calculation. In 2018, given the small number involved, I endorsed the approach taken by the Council in not deducting it from the five year target as calculated above, as it would have made little practical difference.

In 2019, the cumulative surplus was materially in excess of the annual requirement, and in these circumstances the Council sought to factor it in to its calculation; albeit by spreading the surplus over the remaining plan-period rather than just over the next 5 years. This was, to my mind, a reasonable

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approach to take, although I still undertook a parallel calculation with no deduction from the five year target to see what the implications of that would be for the end result and this still produced a supply calculation in excess of five years.

The PPG was revised in 2019, and now includes the following:

“How can past over-supply of housing completions against planned requirements be addressed?”

“Where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years.”

(Ref: Paragraph: 032 Reference ID: 68-032-20190722 Revision date: 22 July 2019)

In 2019 I made the Council aware of an appeal decision in Tewkesbury Borough Council (40 dwellings at Highnam – Ref: PCU/APP/G1630/W/3184272 20.12.2018) in which another two appeals were referenced and where the Inspector concluded that:

“The respective Inspectors did not support an approach whereby an oversupply figure is ‘banked’ so as to reduce the annualised target in later years of the plan period. They concluded that this would run counter to the requirement to significantly boost the supply of housing.”

This decision, however, predated the above amendment to the PPG. Moreover, while Tewkesbury Borough Council sought to challenge the Inspector’s approach to this matter in the courts, Mr Justice Dove decided that he could not hear the claim at all, and he did not resolve the argument one way or the other (Ref: Tewkesbury Borough Council v Secretary of State for Communities and Local Government & Others [2019] EWHC 1775 (Admin) 08.07.2019).

In October 2019 I gave evidence on this particular matter on behalf of Wychavon District Council, and the Inspector’s decision was published on 28th January 2020 (APP/H1840/W/18/3218814 Land to the North of Droitwich Spa). The circumstances of that case (i.e. the 2019 5YHLS calculation) were similar to those here insofar as it was not necessary to consider whether oversupply should be factored in to the calculation for the purposes of deciding how Paragraph 11 of the Framework should be applied because a 5YHLS could still be demonstrated even if it were not factored in. That said, the Inspector did say:

“However, in looking forward, there is nothing within the Framework or National Planning Practice Guidance (PPG) which clarifies this matter. The PPG only explains that where areas

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deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years. In looking at future supply, it will be a matter for other Inspectors, and the Local Plan process will ultimately determine the housing requirement going forward, and that may, or may not, include any oversupply when looking at future supply requirements in the context of other Development Plan matters.”

(Ref: Paragraph 41 APP/H1840/W/18/3218814)

I am still of the view that the way the Council has factored in the over-supply (i.e. by spreading it over the remainder of the plan period rather than just the next 5 years) is a fair and reasonable approach to this, bearing in mind the objective of meeting the housing requirement over the entirety of the plan period. Indeed, to my mind, it would be perverse if the Council were in some way to be disadvantaged if its efforts in bringing forward a surplus of 632 dwellings in delivery over the minimum cumulative requirement to date, were not acknowledged in the calculation. The Government’s stated objective, ever since the publication of the original NPPF in 2012, has been to “*significantly boost the supply of homes*” (Ref: NPPF Paragraph 59), and to my mind a significant boost has taken place in Malvern Hills as is evident from moving from a shortfall of 194 in 2014 to a surplus of 632 in excess of the planned cumulative minimum requirement in 2020.

In order to off-set the surplus of 632 dwelling against the housing requirement over the entire plan-period, the oversupply has been divided by the number of years remaining in the plan period (10) and multiplied by five years to establish the number to be off-set against the 5 year target (i.e. **315**).

I have nevertheless undertaken a sensitivity test in order to understand the implications for the calculation of not factoring in this surplus (see below and Appendix 1).

Buffer

Hitherto, the choice of which buffer to apply i.e. 5% or 20% was dependent on the LPA making a judgement on whether or not there has been a record of “*persistent under delivery of housing*”. Paragraph 73(c) of the RNPPF now uses the term “*significant under delivery*” and defines this as footnote 39 as measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. Delivery in South Worcestershire has in fact exceeded the housing requirement. The latest Housing Delivery Test covering the three years 2016/17, 2017/18 and 2018/19 was published by MHLG on 13th February 2020 and indicates delivery across the South Worcestershire joint Local Plan Area as running at 176% of the requirement.

In these circumstances Paragraph 73 (b) indicates that where the LPA wishes to demonstrate a 5 year supply of deliverable sites through the submission of an annual position statement to the

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Planning Inspectorate, then a buffer of 10% should be added in order to account for any fluctuations in the market during that year. Otherwise, as is the case here, Paragraph 73 (a) applies which indicates that a 5% buffer is appropriate (Ref also NPPG Paragraph: 022 Reference ID: 68-022-20190722 Revision date: 22 July 2019).

I agree that the Council has included the correct percentage buffer at 5%.

Lead Times, Delivery Rates and Discount Assumptions

Most of the 'starting point assumptions' are those that I have previously endorsed and have argued (successfully) in evidence at a number of Public Inquiries over the period 2014 to 2019 on which the neighbouring LPA Wychavon District Council and more recently MHDC have instructed me as expert planning witness i.e. where land supply was an issue. That said, the sites in Malvern Hills tend to be on a smaller scale than those in Wychavon with less involvement from the larger national volume housebuilders.

I also drew the Council's attention to Annex 2 to the RNPPF prior to work starting on last years' 5YHLS; and in particular to the criteria against which to assess whether a site could be considered deliverable.

You also acknowledge at Paragraph 7.4 (4) that the Covid-19 pandemic has had an effect on house construction since the Lockdown was imposed by the Government on 23rd March 2020; in effect one working week before the beginning of the 5YHLS period under consideration. There is anecdotal evidence that not all house construction ceased entirely, particularly on some of the very small sites. But it is fair to say that most of the larger volume housebuilders halted construction around that time. There is also some evidence that housebuilders have experienced some supply-chain difficulties which, combined with the trialling and introduction of new Covid-safe working practices could have slowed the return to pre-lockdown levels of construction.

As I understand it, it was nevertheless evident from Officers' site inspections around mid-June that construction on most sites was back up and running again. This evidence is corroborated by public annual statements made by some of the larger volume housebuilders in advance of publishing their annual results. For example:

- On 5th June Taylor Wimpey stated that they were "*Progressing construction on [the] majority of our sites across England and Wales*" and that the "*Majority of show homes and sales centres [were] open in England*".
- On 26th June, Crest Nicholson indicated that since reopening its operations in May, it had seen increased levels of web traffic and footfall, with reservation rates returning to pre-lockdown levels.
- On 6th July Barratt Homes confirmed that they had "*gradually restarted our site operations from 11 May 2020 in England and Wales*" and that "*All operational sites were reopened by*

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30 June 2020 and all employees, other than those shielding, have now recommenced working in the business.”

- In Persimmon Plc’s Trading Update on 9th July it reported that “the Group began a phased restart to work on site on 27 April 2020, with site-based sales offices re-opening on 15 May 2020” and “Strong performance in the six week period since sales offices re-opened in mid-May - with average weekly net private sales reservations of 278 new homes, c. 30% higher than the same period last year. It also confirmed that “our build programmes had returned to normal levels by period end [30th June]”.

I am still only aware of the one Inspector’s decision dated 9th April 2020 (Land north of Nine Mile Ride, Finchampstead) which I referred you to previously where the Inspector sought comments on the likely impact of Covid-19 on housing supply, after that particular Inquiry had closed on 14th February. The Inspector eventually concluded that an assumption about effects lasting 3-6 months was “not unreasonable”. The Inspector also surmised that “it is equally possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so.” Indeed, some commentators have been quite upbeat about the level of activity and evidence of pent up demand, concluding that lost construction might be made by the end of the year, or if not by 2025.

It is in these circumstances that I consider the Councils approach i.e. discounting a full 6 months i.e. 50% of completions on all sites for 2020/2021 to be at the very top end of what is reasonable but would clearly represent the most robust way forward until there is more evidence on the actual level of completions. This not only takes a pessimistic line on the level of construction during the first three months but also on the rate of any recovery. It would, of course, always be possible to test this assumption through conducting a limited number of site inspections on the largest sites six months on, should it be challenged in the course of any future appeal Inquiry.

Sites with Planning Permission not Started or Under Construction

You acknowledge at paragraph 8.1 that the Glossary in the revised NPPF states that:

“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.”

Insofar as sites with planning permission are concerned it states that:

“(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

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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)."

Sites which involve major development but only have outline permission are required to be considered differently as follows:

"(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."

(Ref: Glossary at Annex 2 to the RNPPF (February 2019 clarification))

I note that, consistent with recent years, the Council has also considered major sites (i.e 10 units or more) with outline permission only, grouped under this same heading and in the same appendix as sites with full planning permission. And while these major sites with outline planning permission have been considered differently (on a site-by-site basis) to those with detailed (Full or Reserved Matters permission), it might be appropriate in future years to separate these out for consideration together with the potentially deliverable allocated sites under heading 9 so as to more clearly reflect the distinction drawn in the revised NPPF (Annex 2).

With reference to paragraph 8.4 in the report, I note that consistent with the PPG, the Council is now counting housing provided for older people, including residential institutions in Use Class C2, as part of their housing land supply; the contribution being based on the amount of accommodation released in the housing market. In accordance with the further guidance set out in 'Housing for Older and Disabled People' I agree that it is appropriate to moderate the numbers by a factor of 2.32 which is the average household size for Malvern Hills District.

Insofar as the individual sites with an extant planning permission at 1st April 2020 are concerned, I have reviewed the available evidence and the Council's comments and, overall, I agree that the assumptions made are prudent and consistent with the definition of 'Deliverable' as set above (Ref: Glossary at Annex 2 to the RNPPF February 2019 clarification) and the guidance set out in the PPG (Ref: Paragraph 007 Reference ID: 68-007-20190722).

Out of a total number of dwellings with planning permission but not yet started of **1,136**, the Council has discounted **290**. This produces a contribution from this source of **846** dwellings over the next 5 years, which I consider to be robust.

Deliverable Allocated Sites in the Adopted SWDP

I have reviewed the Council's approach to this category of site and I am in agreement that discounting all allocated SWDP sites where a planning application had yet to be submitted at April 2020 is a robust starting position. Indeed, given the scale of the 'leeway' identified below, there is no

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need to start looking at allocated sites where applications are anticipated but had not been submitted by April 2020. Indeed of the two sites that account for the **80** dwelling contribution, both have resolutions to approve full planning permission subject to completion of Section 106 Agreements.

Lapse Rate

The application of a 5% lapse rate, over and above the site specific discounts, has been agreed by Inspectors at appeals in Malvern Hills on the basis of the evidence provided by the Council and the conclusions of the Inspector who conducted the Public Examination into the SWDP. I am in agreement that this is still the most appropriate rate to factor into the calculations in spite of the spike in the number of permissions that expired in 2017/18.

I also note that the Government introduced special measures during the Covid-19 lockdown to ensure that planning permissions which would have lapsed between the period of 23rd March and 31st December 2020 will be extended until 1 April 2021.

Consequently, I also consider that a **5%** lapse rate errs on the side of caution.

Windfalls

The Council's assumption of **35** windfall completions per annum but discounted over the first 3 years to avoid double counting with committed small sites is consistent with the approach agreed by the SWDP Inspector in respect of the SWDP housing trajectory. This was also the position taken by the Council in respect of the last five year's housing land supply. As you will know, I had previously argued successfully, in all but one appeal in neighbouring Wychavon (namely Tewkesbury Road, Bredon (Ref: APP/H1840/A/14/2222679 01.06.2015)), that a two year discount is sufficient. The three year discount, in my view, therefore represents an ultra-cautious approach but will reinforce the robustness of the Council's 2020 calculation.

Five Year Land Supply Table

I have checked the calculations and agree with the conclusions and the figure of **8.17** years supply including a 5% buffer, there being a 'leeway' of **515** dwellings.

However, as indicated above, I consider it would be prudent to understand the impact on this calculation of not factoring in a proportion of the 632 dwellings delivered in excess of the cumulative annualised requirement to date, over the next 5 years (i.e. 315 dwellings). Accordingly, therefore, I have reproduced the Council's Table 2 at Appendix 1 to my report (as Table 2A). This produces a **5.81** years supply with a 'leeway' of **185** dwellings.

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Please do not hesitate to contact me should you have any queries with the above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tim Roberts', with a stylized flourish at the end.

Tim Roberts MRTPI

Table 2A Malvern Hills Five Year Housing Land Supply Position at 1 April 2020

Sensitivity Test: Over Supply not factored in

		per annum
Adopted SWDP 2016 target	5,650	
Completions 2006-2020:	4,105	
Undersupply/Oversupply 4,105 - (9 years x 235 + 3 years x 308 + 2 years x 217 = 3,473) 632 (632 / 10 x 5 not factored in)		
5 year target as set out in SWDP3 Table 4b(ii) 5 x 217	1,085	
5 year target + 5%	1,139	228
Deliverable planning permissions not started at 1 April 2020 (1,136 - 290)	846	
Deliverable allocated sites in the adopted SWDP:	80	
Total deliverable sites not started (846 + 80) = 926 - 5% lapse rate:	880	
Sites with planning permission under construction at 1 April 2020	374	
Windfalls 35 x 2:	70	
Total Supply	1,324	
Balance against +5 %	185	
Total years housing supply against +5%	5.81	