

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

F.A.O. Rosie Murray & Corin Beames

Dear Rosie and Corin,

### **MALVERN HILLS APRIL 2016 FIVE YEAR HOUSING LAND SUPPLY**

I have been instructed to carry out a critical review of the Malvern Hills Draft April 2016 Five Year Housing Land Supply calculation with a view to advising on a robust position i.e. one that could reasonably be defended at any future planning appeal.

In accordance with my instructions I have set out below my conclusions on my review of Malvern Hills District Council's (MHDC) draft April 2016 5 Year Housing Land Supply Report by reference to the following eleven sub-headings:

- Housing requirement (the 'Starting Point')
- Completions so far this plan period
- Calculating past undersupply
- Addressing past undersupply
- Buffer (5% or 20%)
- Lead times and delivery rates (general assumptions regarding large sites)
- Sites with planning permission not started or under construction (particular assumptions about delivery on each site and the basis for those assumptions)
- Deliverable allocated sites in the adopted SWDP (particular assumptions about delivery on each site and the basis for those assumptions)
- Lapse rate
- Windfalls
- Five Year Land Supply Table / Calculation

In undertaking this review I have been provided copies of the following:

31.05.2106

- A copy of Rosie Murray's Proof of Evidence (dated February 2016) to the Clay Green Farm, Alfrick Public Inquiry (Ref: APP/J1860/A/3062074);
- Appendix 5 to the above proof setting out MHDC's calculation for the April 2015 5 Year Housing Land Supply;

- Appendix 5a to the above proof comprising the Council's Housing Land Supply Monitor 2014/2015 Master Sites List at 31<sup>st</sup> March 2015 (Completed, Constructed and Outstanding). Also included with this was a partial update at 31<sup>st</sup> January 2016 for the purposes of the Inquiry in question. For the avoidance of doubt, my review relates to the draft April 2016 calculation and I only comment on the 2015 calculation and the partial update insofar as they might have a bearing on the Clay Green Inquiry Inspector's conclusions on this matter (decision still awaited).

27.06.2016

- MHDC – Five Year Housing Land Supply Update 2015/16 Agenda Headings and responses
- 3 Spreadsheets: Completions, Under Construction and Outstanding Sites
- Further Supply Provision – Additional SWDP sites and large windfall sites that have either been approved or are the subject of a resolution to approve (subject to completing a S106), allowed on appeal, or the subject of current planning applications post March 2016 (monitored up to June 2016)

I also attended a meeting with Rosie Murray and Corin Beames on 28<sup>th</sup> June 2016 to discuss and challenge the assumptions and calculations made (overall and for individual sites and components of the supply), and subsequently considered further clarification and confirmation received in response to those discussions.

In preparing this advice I have drawn on my general experience gained in Development Management and Planning Policy over the last eleven years in private practice, and before that, twenty three years with local authorities. I have also drawn heavily on my more recent experience advising your neighbouring Local Planning Authority (Wychavon District Council) on its Five Year Housing Land Supply position in April 2014 and 2015 and acting as expert witness on this matter for it at seven public inquiries.

Where appropriate, I have also made reference to the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

One caveat I should identify is that I am not qualified to advise on any matters of viability either on an individual site-by-site basis or in respect of the Council's general approach to Planning Obligations or (in future) the level of CIL.

I should also make clear that DLP Planning Ltd has no other instructions in respect of any landholdings within the area administered by MHDC. Nor is there any conflict with my current instructions and previous advice provided to Wychavon District Council.

**My overall conclusions are that, on the basis of the information provided to me, the Council can demonstrate a 5 Year Housing Land Supply for the Sub-Area excluding the Wider Worcester Area at 1<sup>st</sup> April 2016 in accordance with Paragraph 47 of the NPPF in circumstances where either a 5% or a 20% is applied.**

### National Policy and Guidance

Insofar as calculating a 5 Year Housing Land Supply is concerned, the most directly relevant extracts from the NPPF are as follows:

Paragraph 47 second bullet point:

*“identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and ensure choice and competition in the market for land.”*

Footnote 11 tells us:

*“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”*

Footnote 12 confirms that:

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

Paragraph 48:

*“Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.”*

## Planning Practice Guidance (PPG)

The National Planning Practice Guidance adds, the following under the heading:

*“How is deliverability (1 - 5years) and developability (6 – 15 years) determined in relation to housing supply?”*

*“Assessing the suitability, availability and achievability (including the economic viability of a site) will provide the information as to whether a site can be considered deliverable, developable or not currently developable for housing. The definition of ‘deliverability’ and ‘developability’ in relation to housing supply is set out in footnote 11 and footnote 12 of the National Planning Policy Framework.”*

*“All aspects of a Local Plan must be realistic and deliverable but there are specific requirements in the Framework in relation to planned housing land supply.”*

(Ref: Paragraph 029 / ID: 3-029-20140306)

Insofar as assessing the 5 year supply is concerned the PPG goes on to say that:

*“The National Planning Policy Framework sets out that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements. Therefore local planning authorities should have an identified five-year housing supply at all points during the plan period. Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.”*

*“Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints. Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure).”*

(Ref: Paragraph 030 / ID: 3-030-20140306)

Paragraphs 31 and 32 of the PPG follow this up by providing further guidance on what constitutes a deliverable site in the context of housing policy.

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

*“However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe.”*

*“The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust five-year housing supply.”*

(Ref: Paragraph 31 / ID: 3-031-20140306)

Paragraph 33 (revised March 2015) is specifically concerned with emphasising the need for LPAs to keep up-to-date the evidence on the supply of deliverable sites sufficient to provide five years' worth of housing against housing requirements.

*“Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position.”*

*“The National Planning Policy Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing. As part of this, local planning authorities should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply.”*

*“Local planning authorities should ensure that they carry out their annual assessment in a robust and timely fashion, based on up-to-date and sound evidence, taking into account the anticipated trajectory of housing delivery, and consideration of associated risks, and an assessment of the local delivery record. Such assessment, including the evidence used, should be realistic and made publicly available in an accessible format. Once published, such assessments should normally not need to be updated for a full*

*twelve months unless significant new evidence comes to light or the local authority wishes to update its assessment earlier.”*

*“By taking a thorough approach on an annual basis, local planning authorities will be in a strong position to demonstrate a robust five year supply of sites. Demonstration of a five year supply is a key material consideration when determining housing applications and appeals. As set out in the National Planning Policy Framework, a five year supply is also central to demonstrating that relevant policies for the supply of housing are up-to-date in applying the presumption in favour of sustainable development.”*

(Ref: Paragraph 33 / ID: 3-033-20150327)

Paragraph 35 provides guidance on how LPAs should deal with past under-supply.

*“The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing.”*

*“The factors behind persistent under delivery may vary from place to place and, therefore, there can be no universally applicable test or definition of the term. It is legitimate to consider a range of issues, such as the effect of imposed housing moratoriums and the delivery rate before and after any such moratoriums.”*

*“The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle.”*

*“Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the ‘Duty to Cooperate’.”*

(Ref: Paragraph 35 / ID: 3-035-20140306)

Paragraph 36 deals with past oversupply; a matter which I understand is not relevant to Malvern Hills.

Paragraph 37 (Revised March 2015) provides guidance to the effect that residential accommodation which falls within Use Class C2 can be counted.

*“Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan.”*

(Ref: Paragraph: 037 Reference ID: 3-037-20150320)

A slightly different approach to student housing is taken at paragraph 38:

*“All student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double-counting.”*

(Ref: Paragraph 38 / ID: 3-038-20140306)

Guidance on how LPAs should deal with empty housing and buildings is set out at paragraph 39:

*“The National Planning Policy Framework encourages local authorities to bring empty housing and buildings back into residential use. Empty homes can help to contribute towards meeting housing need but it would be for individual local authorities to identify and implement an empty homes strategy. Any approach to bringing empty homes back into use and counting these against housing need would have to be robustly evidenced by the local planning authority at the independent examination of the draft Local Plan, for example to test the deliverability of the strategy and to avoid double counting (local planning authorities would need to demonstrate that empty homes had not been counted within their existing stock of dwellings when calculating their overall need for additional dwellings in their local plans).”*

(Ref: Paragraph 39 / ID: 3-039-20140306)

Paragraph 41 confirms that the assessment of sites should be kept up-to-date as part of LPA’s annual monitoring report but clarifies that:

*“It should only be necessary to carry out a full re-survey of the sites/broad locations when development plans have to be reviewed or other significant changes make this necessary (e.g. if a local planning authority is no longer able to demonstrate a five year supply of specific deliverable sites for housing).”*

(Ref: Paragraph 41 / ID: 3-041-20140306)

Finally, paragraph 43 provides guidance on the information that should be recorded when monitoring the 5 year supply:

*“The main information to record is:*

- *progress with delivery of development on allocated and sites with planning permission;*

- *planning applications that have been submitted or approved on sites and broad locations identified by the assessment;*
- *progress that has been made in removing constraints on development and whether a site is now considered to be deliverable or developable;*
- *unforeseen constraints that have emerged which now mean a site is no longer deliverable or developable, and how these could be addressed;*
- *whether the windfall allowance (where justified) is coming forward as expected, or may need to be adjusted.”*

(Ref: Paragraph 43 / ID: 3-043-20140306)

### Housing Requirement (the ‘Starting Point’)

To begin to assess whether a five-year supply can be demonstrated, it is first necessary to consider the most appropriate ‘housing requirement’ for the plan-period against which to measure it.

I am in agreement that it is now appropriate to conduct a separate 5 Year Housing Land Supply for the Malvern Hills Sub-Area (i.e. excluding the Wider Worcester Area), and to adopt the figure of 5,650 as the dwelling requirement for this sub-area for the period 2006 to 2030 as the ‘starting point’.

Authority for this comes from the South Worcestershire Development Plan which was adopted on 25<sup>th</sup> February 2016. Policy SWDP3 C confirms the plan period and the total requirements as follows:

*“Housing provision will be made for about 28,400 dwellings (net) during the plan period, comprising the area subtotals, which are separate and non-transferable and comprise the related market housing and affordable housing provision sub-totals, as set out in Table 4b(i). The annual requirement rates in Table 4b(ii) will apply when monitoring delivery of the area sub-total targets set out in Table 4b(i), and when calculating the five-year supply requirement for the purposes of Framework paragraph 47.*

Table 4(b)i sets out a total net ‘housing provision’ for the Malvern Hills Sub-Area (excluding the Wider Worcester Area) as being 5,650 over the plan period of 2006 to 2030 (24 years).

Table 4(b)ii sets out the annual requirement for the Malvern Hills Sub Area in three tranches as follows:

2006-2015 - 235dpa (9 years)

2015-2018 - 308dpa (3 years)

2018-2030 - 217dpa (12 years)

### Completions

Completions for the plan period thus far, as counted by the Council, are seldom a source of dispute. I therefore make no comment on the figure presented for Malvern thus far of 2,267 (i.e. for the 10 years 2006/07 to 2015/16) other than to note that this does not include any completions falling within Use Class C2, or any 'Park Homes' completions. My recommendation here is that MHDC should consider, in future, monitoring completions of these separately and count them towards supply where they are self-contained and there are no restrictions on occupation other than age.

Year on year (net) completions are recorded as follows:

<u>Year</u>	<u>Net Completions</u>	<u>Annualised SWDP Requirement (SWDP Table 4b(ii))</u>	<u>Deviation from annualised SWDP Requirement</u>
2006/07	183	235	-52
2007/08	299	235	+64
2008/09	256	235	+21
2009/10	222	235	-13
2010/11	137	235	-98
2011/12	229	235	-6
2012/13	176	235	-59
2013/14	184	235	-51
2014/15	258	235	+23
2015/16	323	308	+15
<b>Total 2006/2016</b>	<b>2,267</b>	<b>2,423</b>	<b>-156</b>

### Calculating Past Undersupply

Insofar as dealing with past undersupply is concerned, we note that the Inspector who conducted the SWDP Examination indicated in his Interim Conclusions on Stage 1 Matters, that once a satisfactory objective assessment of need over the whole plan period is made (i.e. 2006 to 2030) *“there will be no need to consider past undersupply, as I will expect the Plan to make provision for the full assessed level of need.”* (Ref: SWDP Inspector’s interim conclusions paragraph 55.) That is to say, it will have assessed need 2006 onwards as well as taken into account ‘backlog need’ pre 2006.

However, and for the avoidance of doubt, that does not mean that delivery to meet undersupply 2006 to 2016 should not be considered i.e. any shortfall in actual supply compared with the annualised requirement thus far during that period.

With reference to Policy SWDP 3C and Table 4(b) ii, I note that the annualised requirement for the nine years to April 2015 is 235 dpa (giving a total of 2,115) while this rises to 308 for 2015/16, giving an overall total of 2,423 for 2006/07 to 2015/16.

With total completions at April 2016 recorded as 2,267, I agree with the assessment of undersupply being 156.

### Addressing Past Undersupply

While the expectation is that the Plan will make provision in 2016 to 2030 for the balance of what has not hitherto been delivered in 2006 to 2016, the question still arises: over what period should the LPA aim to deliver the shortfall in provision against need for 2006 to 2016? Indeed, there is a supplementary question I am sometimes asked: When should the buffer (see below) be applied: Before or after the undersupply has been factored in?

I note that in the Council's approach to the calculation it adds the last 10 years under supply to the 5-Year target i.e. effectively seeking to meet that undersupply within the next 5-years; the so-called 'Sedgefield Approach'. As opposed to the 'Liverpool Approach' where delivering the undersupply is spread over the rest of the plan period.

This clearly accords with the PPG which indicates that LPAs should aim to deal with any undersupply within the first five years of the plan period, albeit with the caveat "where possible" (Ref: NPPG Paragraph 35/ID: 3-035-20140306). The Council's adoption of this approach (the 'Sedgefield Approach') ensures a robust approach to dealing with this point.

The addition of this undersupply into the equation before the buffer is applied, as the Council has done, would also be consistent with my experience elsewhere and represents the most robust option.

It is, however, noteworthy that 493 plots are identified as being on sites under construction which supports the expectation that the under supply will be reduced significantly in the next year.

### Choice of Buffer

The choice of which buffer to apply i.e. 5% or 20% (Ref: NPPF Para 47) is dependent on the LPA making a judgement on whether or not there has been a record of "*persistent under delivery of housing*". This is a matter of judgement that the PPG says is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle.

My starting point on this matter has been the Inspectors decision on the appeal at Walshes Farm, Clows Top Road, Abberley, issued on 8<sup>th</sup> October 2013 (Ref: APP/J1860/A/13/2192810) which was referred to in Mrs Murray's proof of evidence on the

more recent, and as yet undecided appeal at Clay Green Farm (Ref: APP/J1860/A/3062074). In her report at paragraph 18, Inspector Lesley Coffey states that:

*“Persistent under delivery is not defined within the Framework and the delivery of housing within Malvern District has been subject to a number of different targets in recent years. The Council had regularly exceeded the housing targets within the recently revoked WMRSS, but failed to achieve those within the Local Plan in four of the five years between 2006-2011. It also failed to meet targets within the Phase 2 Panel Report in three of the past five years. Given that the target within the Phase 2 Panel Report was not adopted by the Council, and that the Local Plan targets are time expired, I am not persuaded, on the basis of the available evidence, that there is a persistent record of under-delivery within the District.”*

The record for delivery over the 15 year period of the Worcestershire Structure Plan 1996-2011 was that it fell short of the target of 3,900 by just 56 dwellings (1.4% of the total).

I also note that the SWDP Inspector concluded that:

*“No new evidence has come forward since my ICs were published in October 2013 to invalidate my conclusion that a 5% “buffer” is appropriate”.*

(Ref: SWDP Inspector’s Report Para 71)

The above provides a basis for arguing that a 5% buffer would be appropriate, although I note that Inspector Coffey’s conclusion was based on evidence for the period up to 2012.

If we now look at year-on-year (net) completions over the last ten years in comparison with the annualised housing provision now adopted for each of those years in the SWDP Table 4(b)ii (see above), it is evident that in 6 out of those 10 years net completions fell short of the target. The corollary of this is that in the other 4 years the annualised requirement was exceeded, such that the overall shortfall in delivery now is reduced to 156 dwellings or 6.4% of the requirement 2006 to 2016 as derived from the adopted SWDP Table 4b(ii).

Given the above, my judgement is that there is a greater risk now than there was in 2013 of an Inspector at a Section 78 Appeal concluding that there has been persistent under delivery. The conclusions of the Clay Green Farm Inspector on this, are expected shortly, and will no doubt be quoted by any future appellants in the event that a 20% buffer is supported.

For my part, I am on record as advising Wychavon District Council in July 2014 that it should adopt a 20% buffer given, *inter alia*, that net annual completions fell short of the (then) annualised OAHN of 415 on 6 of the 8 years to 2013/14; albeit the 2 positive years being the most recent.

In my view it would be prudent to prepare two calculations, one with a 5 % buffer and one at 20%, not least so that it can be clear whether the choice of buffer is critical.

The case for favouring a 5% buffer next year would be more conclusive when delivery in 2016/17 is, as is expected to be by the numbers recorded as under construction, significantly above target, and past undersupply is either significantly reduced or possibly fully addressed.

Given that the purpose of the buffer is “to provide a realistic prospect of achieving the planned supply and ensure choice and competition in the market for land”, I agree with MHDC that the buffer should be applied after the undersupply has been added in. This is would certainly be the most robust approach.

### Lead Times and Delivery Rates

Before looking at the different categories of sites the Council identify as contributing (or not) to delivery within the next 5 years, it is appropriate to consider what general assumptions might be made, even where sites are relatively unconstrained, in respect of lead-times and delivery rates, such that a proportion of the units ought reasonably to be discounted.

I should stress, however, that these are ‘working assumptions’ and need to be treated as a starting point and should be considered alongside other site specific information that may be available from landowners/developers/housebuilders. I would nevertheless advise against relying too heavily on (without question) the statements and information provided by landowners/developers/house builders in respect of their own sites.

Insofar as lead-times are concerned, I participated in a collective exercise on behalf of a number of house builders/landowners in respect of lead-times for delivery on prospective Greenfield sites around the market town of Thornbury in South Gloucestershire and I have subsequently based my evidence in defence of Wychavon District Council’s 5 year land supply on this.

This assumed a range of between a minimum of 18 and 26 months from the submission of an outline planning application to the first legal completion, to cover such matters as completion of Section 106 Agreements, approval of reserved matters, discharge of pre-commencement conditions and site works. MHDC has confirmed that it has assumed 18 months to first completion (from June 2016) as the standard time to assess delivery on the outstanding sites which have planning permission (outline and full).

Insofar as rates of delivery are concerned, an assumption of 40 dpa per ‘outlet’ was assumed in the exercise I refer to above for volume house builders once a site was up and running and into its first full years of production. This was supported by analysis undertaken by WYG of national house builders’ annual reports looking at the number of sites and the number of completions over a particular year, though this is clearly not specific to Malvern Hills District.

Indeed MHDC has assumed much lower rates of completions given the generally smaller size of sites in the district, while also having regard to its recent experience. The highest rate it has assumed following the 18 month lead time is 20 -25 dpa with the majority at 10dpa or lower, and I agree that this is a more reasonable approach. Some of the assumed delivery rates appear quite pessimistic but I have not suggested they are amended because this is not an exercise in calculating a year on year trajectory, and the end result, in terms of delivery within the next 5 years, would be the same.

While there is a case for considering sites where no applications have been submitted, and factoring in long lead times, as a general approach, my recommendation would be to discount such sites altogether from the 5 year land supply in the absence of any credible evidence of likely progress through the planning process. Accordingly, I agree with the approach taken by MHDC to discount all SWDP sites where no planning permission had been submitted as of 1<sup>st</sup> April 2016.

Where an application has been submitted, and there are no landownership issues or significant infrastructure constraints, then a starting assumption of a lead time around 24 months to first legal completion would be reasonable. This is the approach taken by MHDC.

This lead time could be reduced to 18 months where outline planning permission has been granted (i.e. a Section 106 signed, not just a resolution to grant), and 12 months where full planning permission or all reserved matters have been granted. These assumptions only apply to volume house builders. Local or smaller volume builders will vary considerably in their abilities to deliver quickly but would tend to be involved in much smaller sites. I note that MHDC has taken an even more robust approach to this by assuming an a 18 months lead time for all sites with permission but not started at 1<sup>st</sup> April 2016, irrespective of whether the permission is outline or full.

#### Sites with Planning Permission not Started or Under Construction

Footnote 11 to NPPF Paragraph 47 is clear that all plots that have unexpired planning permissions “should” be included, “unless there is clear evidence that schemes will not be implemented within 5 years, for example where they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

From our discussions, and given the modest size of most of the sites, a reasonable starting point in MHD would be to include delivery of all of those units unless the Council is aware of circumstances on particular sites where a start within the next 5 years looks doubtful. Insofar as the individual sites are concerned, having reviewed these against the starting-point assumptions discussed above, I agree that the assumptions made now are prudent and consistent with Paragraph 47 and Footnotes 11 and 12 of the NPPF and the guidance set out in the PPG.

However, and as referred to above, I would endorse the merits of, in future, monitoring C2 completions separately and to distinguish those which should legitimately be counted towards meeting the overall requirements of Policy SWDP 3 and the 5 Year housing land supply.

#### Deliverable Allocated Sites in the adopted SWDP

The most robust approach to adopt would, of course, be to restrict the list of deliverable sites to those which have the benefit of planning permission, and I am aware that in the past objectors have cited some support for this in appeal decisions (Refs: APP/H1033/A/11/2159038 Manchester Road, High Peak, Derbyshire, APP/U1105/A/12/2180060 Land East of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon). However, those Inspectors did go on to consider some sites that did not have planning permission.

Paragraph 31 of the NPPG helpfully indicates that deliverable sites “could” include those that are allocated for housing in the development plan, albeit subject to the same caveat as sites with planning permission i.e. unless there is clear evidence that schemes will not be implemented within 5 years.

On my advice Officers have also now considered all those sites allocated in the SWDP which, at 1<sup>st</sup> April 2016, were the subject of a current planning application, indeed some have subsequently been the subject of a positive resolution to grant planning permission.

The assumptions MHDC has made about those particular allocated sites, individually, having regard to the starting-point assumptions discussed above, are to my mind, prudent and consistent with Paragraph 47 and Footnotes 11 and 12 of the NPPF and the guidance set out in the PPG.

#### Lapse Rate

We note that the Inspector conducting the SWDP Examination was critical of the way the lapse rate of 4% across the SWDP area was justified, and by approaching the calculation correctly, he arrives at an average of 4.8% and concludes that adopting 5% as an assumption about future rates would be “robust and sound”.

Indeed a discount of 5% for planning permissions not being implemented has been applied to all outstanding housing commitments (excluding dwellings under construction) in the SWDP (Ref Notes to Table 4d).

Adopting a 5% lapse rate appears to me to be reasonable in the light of actual rates calculated for Malvern Hills District over the past 10 years which averaged 5.63% and the conclusion reached by the Inspector conducting the SWDP Examination. I am aware, as was the SWDP Examination Inspector, that a 10% lapse rate has been applied elsewhere as a rule

of thumb, but only in circumstances where no detailed evidence has been made available. This appears to have its origins in a document prepared 21 years ago by Roger Tym and Partners (RTPI & DoE – Planning and Research Programme 1995). This was generally applied to all allocations across the whole plan-period not just to take account of lapsed permissions but delayed and/or reduced delivery on some sites.

Given: the detailed evidence provided by the Council for the period 2006 to 2016; the fact that this figure is being applied to all sites other than those under construction; and that these individual sites have already been discounted where appropriate; I can see no reason to adopt a figure higher than 5% here.

The 5% lapse rate, over and above the site specific discounts, has consistently been agreed by Inspectors at more recent appeals in Wychavon on the basis of the evidence provided by that Council.

### Windfalls

A windfall allowance may be justified in the five-year supply if a local planning authority has “*compelling evidence*” as set out in paragraph 48 of the National Planning Policy Framework.

Given the above, the Inspector conducting the Examination into the SWDP confirmed in his Interim Conclusions (October 2013) that, in principle, he saw no objection to the Plan accounting for windfalls as part of the supply of housing over the plan period. The SWDP confirms a windfall allowance for Malvern Hills of 35 dpa over the period 2017 – 2026. I see no reason not to take this as the starting point.

The SHLAA Practice Guidance defines windfall sites as ‘those which have not been specifically identified as available in the local plan process. They typically comprise previously-developed sites that have become unexpectedly available. These could include, for example, large sites resulting from, for example, a factory closure or small sites such as a residential conversion or a new flat over a shop’. I am aware that ‘large’ windfalls sites of 5 or more dwellings (and not Greenfield/nor garden land) have been entirely discounted by the Council.

The evidence produced by MHDC for the contribution made by small brownfield sites (i.e. 4 dwellings or less) over the last 10 years supports the figure of 35dpa.

My experience elsewhere is that Inspectors by and large have accepted that it is appropriate to discount the first two years in order to avoid double counting with completions on small windfall commitments. However the SWDP on the advice of the Inspector, discounts windfall contributions over the first three years. On this basis windfalls could be included in the 5 Year land supply as contributing 70 dwellings, and taking this approach would leave little room for an objection being sustained.

The evidence I have seen, however, is short on providing any “compelling evidence” that they will continue to provide a reliable source of supply into the future. In my experience though Inspectors do not appear overly concerned about this given the lack of any convincing evidence of changed circumstances likely to affect the incidence of windfalls in the District.

I would recommend, however, that the Council should make it clear that it has at least considered this matter and looked at what changes might affect future delivery given the intuitive position often taken by objectors that this is potentially a diminishing resource, even though it is seldom borne out by past rates of delivery. The following, might have an effect:

- Possible negative impact of the introduction of CIL even though this would be required to be set at a level that did not render development unviable
- Whether the SWDP, introduced changes to policy which would diminish the rate at which windfalls would be permitted
- Any specific new rural exception site initiatives/programmes with funding.
- Any empty homes programme
- The changes to Permitted Development rights in respect of a change of use from B1 (office) to residential as well as those that came into effect on 6th April 2014 (from retail and agricultural uses to residential) might even provide a modest boost in the short term. These (i.e. achieved through the Prior-notification route) would certainly be worth monitoring separately.

I would also consider that it is worth qualifying this figure with commentary which reminds the reader that SWDP polices do not rule out developments on garden land, it is just that no allowance is made for them in the windfall assumptions.

### Overall Conclusions

My overall conclusions are that, on the basis of the information provided to me, the Council can demonstrate a 5 Year Housing Land Supply for the Sub-Area excluding the Wider Worcester Area at 1st April 2016 in accordance with Paragraph 47 of the NPPF in circumstances where either a 5% or a 20% buffer is applied.

I have set out at Appendix 1 to this letter my recommended simplified version of the Council's Calculation.

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



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A handwritten signature in black ink, appearing to read 'Tim Roberts', written over a white rectangular background.

**Tim Roberts MRTTP**

1 Blenheim Court, Beaufort Office Park, Woodlands, Bradley Stoke, Bristol, BS32 4NE

t 01454 410 380

f 01454 410 389

e [bristol@dlpconsultants.co.uk](mailto:bristol@dlpconsultants.co.uk)

[www.dlpconsultants.co.uk](http://www.dlpconsultants.co.uk)

Offices also at: Bedford, Cardiff, Leeds, London  
Milton Keynes, Nottingham, Rugby and Sheffield

Registered office: 4 Abbey Court, Fraser Road,  
Priory Business Park, Bedford MK44 3WH (Reg. No. 2604863)  
A list of directors is available for inspection at the registered office

Five Year Land Supply Table: Malvern Hills District (Excluding Wider Worcester Area) April 2016

Recommended simplified approach is as follows:

(Sedgefield Approach)		per annum
<b>Housing Provision 2006-2030 (24 years) (Adopted SWDP Table 4b(i))</b>	5,650	235 x 9 308 x 3 217 x 12
<b>Completions 2006-2016:</b>	2,267	
Undersupply (9 years x 235 + 1 year x 308) 2,423 – 2,267	156	
5 year target (2 x 308 + 3 x 217)	1,267	
Target with undersupply added:	1,423	
<b>5 year target + 20%</b>	<b>1,708</b>	<b>342</b>
5 year target + 5%	1,494	299
Planning permissions not started at 1 April 2016:	1,168	
Other deliverable sites with a resolution to approve at 1 <sup>st</sup> April 2016 subject to a S106 Agreement	186	
Other deliverable sites, including sites allocated in the SWDP which were the subject of a planning application at 1 <sup>st</sup> April 2016):	163	
Total deliverable sites not started (1,518 - 5% lapse rate):	1,441	
Sites with planning permission under construction at 1 <sup>st</sup> April 2016	491	
Windfalls 35 x 2:	70	
Total Supply	2,002	
<b>Balance against +20 %</b>	<b>+294</b>	
<b>Total years housing supply against +20%</b>	<b>5.85</b>	
Balance against +5%	+508	
Total years housing supply against +5%	6.70	