

Malvern Hills District Council

Position Statement: 5 Year Housing Land Supply

12 August 2013



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1 Introduction

- 1.1 Malvern Hills District Council issued an Interim Position Statement (IPS) relating to its 5 year housing land supply (5YHLS) on 25 June 2013. This IPS was issued to assess the impact of changes to the policy context, including the submission of the South Worcestershire Development Plan (SWDP) for Examination on 28 May 2013, the revocation of the RSS on 20 May 2013, the precedent set by a number of recent appeal and costs decisions; and was issued to help provide a clear and consistent approach for guiding decisions on relevant planning applications whilst annual monitoring on housing supply was completed.
- 1.2 The annual Housing Land Supply Monitor (HLSM) has now been completed for the period 2012/13 with monitoring information up to 31 March 2013 (currently being formatted for publication). This Position Statement now replaces the IPS, reflecting the updated monitoring information now available and any recent case law, appeal precedent or changes to national policy.
- 1.3 At the date of writing, the Council does not have an appeal decision which sets out the Inspectorate's view of whether the Council can currently demonstrate a 5 year supply of land for housing based on the methodology put forward in the IPS.

2 National Policy Context

- 2.1 Paragraph 49 of the National Planning Policy Framework (the Framework) states that *“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*
- 2.2 Under paragraph 47 of the Framework, local planning authorities need to 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%.

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- 2.3 Paragraph 14 of the Framework states that for decision making on applications, the ‘presumption in favour of sustainable development’ means, where *“the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
- “— any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;*
- or*
- specific policies in this Framework indicate development should be restricted.”*

3 Identifying the Target

National Policy & Guidance

- 3.1 In order to calculate a 5 year housing land supply, a requirement or ‘target’ needs to be identified against which supply can be measured. Paragraph 47 of the Framework indicates that ‘requirements’ should be identified in Local Plans, and that it is these requirements against which the 5 year supply should be measured.
- 3.2 The Localism Act (Nov 2011) set in motion the abolition of Regional Strategies that had hitherto provided regional and lower level housing targets for district areas. The adopted West Midlands Regional Strategy 2008 (WMRSS) was revoked 20 May 2013. The Regional Strategy Phase 2 Revision had progressed to the post-examination ‘Panel Report Stage’ in 2009 before being discontinued in 2010.
- 3.3 Whilst the situation with regard to housing land supply is and will continue to be a fluid situation, it is important that the Council makes clear its preferred method of calculation (target and supply) in order to apply the appropriate development plan policy tests and the tests set out in the Framework when determining relevant planning applications. However, it is also considered that the Council still needs to set out a range of options until such time as national policy, as applied through appeal precedent, case law or any further government advice, becomes clearer.
- 3.4 Reference to the targets of the following documents is made only in so far as to assess any past “persistent under delivery of housing:”
- The now revoked adopted WMRSS (revoked 20 May 2013)
 - The housing targets of Worcestershire County Structure Plan (Policy was not saved beyond September 2007. Remaining saved policies now revoked 20 May 2013)
 - The saved targets of the Malvern Hills District Local Plan (Still saved and extant, but only cover the period 2006-2011)

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- 3.5 There is therefore effectively no adopted development plan target for housing supply in Malvern Hills District.

Putting Weight on Emerging Plans

- 3.6 National policy in both the Framework and the 'The Planning System: General Principles (2004)'; and case law, including the recent Axminster judgment (Save our Parkland Appeal Limited – and – East Devonshire District Council – and – Axminster Carpets Limited, 18 January 2013), are clear that weight can be attached to emerging plans; but until such time as they are adopted, this weight will always be limited.
- 3.7 Paragraph 216 of the Framework states that "decision takers may also give weight to relevant policies in emerging plans according to:
- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
 - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."
- 3.8 A recent statement by Nick Boles (Under-Secretary of State for Communities and Local Government) made at Westminster Hall on 17th July 2013 indicated that the Government will produce "in a matter of days" draft guidance to address the weight that can be given to emerging plans indicating that: "*We will make it clear that once a plan has reached the point that, first, it has become specific and, secondly, it has gone through a fairly substantial level of public consultation, it will become something of real materiality—to use the lawyers' phrase—as a consideration in decision making.*" To date, this has not been published.

Previous Malvern Hills Position

- 3.9 The most recent fully detailed 5 year housing land supply assessment for Malvern Hills was set out in the "Housing Land Availability Monitor and 5 year Housing Land Supply Update April 2012 - updated November 2012" (the November 2012 HLAM) which measured supply against a number of housing targets. This was in recognition of the conflict between the Framework advice, the then still in existence Regional

Strategy and the outdated timeframe of the targets in the adopted Malvern Hills Local Plan (1996-2011).

- 3.10 In view of this conflict and in the absence of definitive case law or appeal precedent, the Council set out in the November 2012 HLAM, its supply position against the emerging SWDP (Preferred Options - Sep 2011 and Proposed Significant Changes - August 2012) as well as the adopted WMRSS 2008¹ and the Phase 2 Review of its housing targets (Preferred Option - Dec 2007).
- 3.11 Following the publication of the Proposed Submission SWDP in January 2013 and in the light of a number of appeal decisions elsewhere in the West Midlands which had preferred to use the WMRSS Panel Report 2009 targets, the Council published interim supply data firstly through appeal statements² and Committee reports including against the targets set out in the Panel Report and the SWDP Proposed Submission Document. This was then formalised in the IPS pending a more detailed assessment and update to be completed after the end of the next monitoring period 2012/13, which would also take into account any further appeal decisions.
- 3.12 The WMRSS Phase 2 Revision was discontinued in 2010, however, some inspectors were still indicating that substantial weight could be afforded to the emerging targets set out in the Panel Report because these had undergone examination in public and were more up to date (than the adopted WMRSS). These appeal decisions predate the formal revocation of the WMRSS in May 2013 and it is unclear at the present time how the revocation will affect this stance.
- 3.13 The Panel Report also recommended a phasing policy to manage delivery over the overall plan-period. Although these phased figures were not broken down to district level, for Worcestershire, the phasing policy proposed lower targets for the years 2006-11 and 2011-16 suggesting much lower annual rates than the annualised rates that the inspector at Honeybourne favoured (see later paras 3.18 & 3.19).
- 3.14 Since the issue of the Panel Report in 2009, new household and population projections have been published by CLG.^{3 4} The housing requirement ('target')

¹ The WMRSS did not set out a target for Malvern Hills District but the Secretary of State's letter of 15 June 2004 stated that "in the absence of better information authorities should retain the Structure Plan proportions"

² This data was first published in the Council's Statement of Case for the Appeal Hearing at Walshes Farm, Abberley

³ The Panel Report used evidence from the ONS 2006-based population projections issued in May 2008 Revised 2008-based sub national population projections and 2010-based sub national population projections were issued in May 2010 and March 2012 respectively and in Sep 2012 interim 2011-based sub-national population projections were issued reflecting the updated data available through the 2011 census.

⁴ The Panel Reports used evidence from the CLG Household projections issued in March 2009

figures in the Proposed Submission Draft SWDP are based on detailed demographic and economic modelling undertaken as part of the Worcestershire Strategic Housing Market Assessment (SHMA) published in February 2012 which is more up to date than the WMRSS Phase 2 review evidence base. They also take on board the advice of the Framework and have been subject to detailed appraisal and consultation. The SWDP has now reached Examination stage. It is acknowledged, however, that there are representations to these housing targets which have yet to be considered by the Inspector. Whilst the weight to be attached to its policies is therefore limited and can vary from policy to policy, its weight is considered to be significant in terms of decision making.

- 3.15 In a Written Ministerial Statement of 27 March 2013 announcing the Coalition Government's decision to revoke the Regional Strategies for the West Midlands, North West and South West, The Parliamentary Under-Secretary of State, Baroness Hanham stated:

"From now on, every local community in England will have more control over local planning and development. The top-down approach of Regional Strategies from the last Administration imposed centrally set building targets on communities and coincided with the lowest peace-time levels of house building since the 1920s.

The abolition of these unpopular and counter-productive Regional Strategies reinforces the importance of councils' Local Plans produced with the involvement of local communities, as the keystone of the planning system. It is this approach that will help deliver the homes, jobs and infrastructure we need."

- 3.16 The local plan-led approach to development is a core principle of the Framework as set out in paragraph 2, *"Planning Law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise"*. Paragraph 17 also states that planning should be *"genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues"*.
- 3.17 The Framework and the Written Ministerial Statement clearly support the approach taken in developing a joint SWDP and are clear that regional plans have no role moving forwards, although paragraph 218 of the Framework allows for local planning

authorities to draw on the evidence that informed the preparation of regional strategies to support local plan policies, supplemented as needed by up-to-date, robust local evidence.

Appeal Precedent

- 3.18 At an appeal decision at Dudley Road, **Honeybourne** in August 2012 (APP/H1840/A/12/2171339) the inspector commented on the adopted WMRSS and described its targets as being *“only on a county wide basis and are extremely old, being based on household projections from the 1990s. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded to the policies. They should not be used for future requirements.”* Although he recognised that The Phase 2 Revision Draft of the WMRSS *“is not an approved document and therefore it does not form part of the development plan. It is though a document which is a material consideration in this appeal and given the stage reached (Panel Report) would normally be of substantial weight. In a number of appeals the emerging RSS has been given substantial weight, particularly because it has undergone an EIP and the housing figures are more up to date and have been properly examined. The figures contained within the Panel Report remain the most recent objectively assessed figures available, although there have been more recent household and population projections since these were published. The figures in this plan are therefore of weight and are a starting point in the consideration of housing supply.”* With regard to the SWDP which was then at Preferred Options stage he commented: *“Given the stage reached the SWDP can be given little weight.”*
- 3.19 This decision did not refer to the Panel Report’s recommended phasing policy for Worcestershire, which proposed lower targets for the years 2006-11 and 2011-16 suggesting much lower annual rates than the annualised rates that the inspector favoured.
- 3.20 In a more recent appeal decision at Hampton Drive, **Kings Sutton**, Northamptonshire (APP/Z2830/A/13/2194278) which post dated the revocation of the Regional Strategy the inspector stated *“notwithstanding the revocation of the RSS, the housing targets set within it, along with the evidence base which underpins them, remain the only housing figures which have been subject to public scrutiny. As such, despite the Council’s concerns, I have afforded them significant weight in my consideration of this appeal, given the lack of housing targets within the Local Plan and the current status of the emerging Joint Core Strategy”.*

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- 3.21 A number of recent appeal decisions in Malvern Hills District have discussed housing supply targets. The decision on APP/J1860/A/11/2161729, **Hangmans Lane, Hanley Castle** in August 2012 stated that as the Government was committed to abolishing all RSS's, little weight could be given to the WMRSS Phase 2 Revision Preferred Option figure. It also stated with regard to the SWDP (which was then still at the preferred options stage), that it was common ground that it should carry 'little weight' and that this must also apply to the evidence base because it had not yet been tested through the development plan process. *"That leaves the RSS figure of 6.3 years [adopted version] which is the most up to date part of the adopted development plan, albeit dating back to 2008, and on this basis there is an adequate supply of housing land.*
- 3.22 The decision on APP/J1860/A/12/2185834, Land at **Shoulton Lane, Hallow**, on 19 March 2013 came to a conclusion on the 5 year land supply recognising that the different amounts of supply were shown by the Council (in the Nov 2012 HLAM) against different potential targets, but that there *"is a shortfall when the Council's own preferred target is used"*. (The preferred target figure referred to is the SWDP Proposed Significant Changes 2012 showing a 4.6 year supply) and the Inspector considered that this showed a *prima facie* shortfall in the housing land supply which could be argued in favour of allowing the appeal. However, the appeal was dismissed when the impact on the character of the area was weighed against the shortfall in housing supply which was not *"so serious that it can be seen as constituting overriding urgency which would justify allowing development of the appeal site at this stage"*. The Nov 2012 HLAM and the figure of 4.6 years, did not include any of the proposed SWDP housing allocations.
- 3.23 Both these decisions pre-date the revocation of the WMRSS and the Submission of the SWDP. The more recent **Rushwick** appeal decisions of 10 June 2013 (APP/J1860/A/12/21877934) which post-date the RSS revocation, do not indicate which targets should be used. As the Council conceded during the Inquiry that it could not demonstrate a 5 year housing land supply (as attested by the appellant) the Inspector did not make a judgement on this issue except to conclude that this was the case, and he did not state what he considered to be the relevant target. He did not discuss the SWDP in terms of housing land supply, but in other aspects of the appeal he gave some, but limited weight to the emerging SWDP; and in respect of affordable housing, appeared to give unlimited weight to the SWDP 40% target or evidence underpinning it, even though there are representations to this SWDP policy.

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- 3.24 The decision did not indicate that the Council could not use the SWDP target or include emerging allocations in its supply. It did not discuss the methodology for calculating either the target or supply.
- 3.25 In the appeal at **14 Grundy's Lane, Malvern** (decision 18 June 2013) (demolition of existing house and erection of 6 houses APP/J1860/A/13/2191669) the Inspector did not refer to housing land supply at all. She did mention the SWDP, in respect of which she noted *"Its intended submission in April 2013 has slipped following the number of objections made to the proposed policies. It was not known at the hearing whether these included objections to the emerging policies relevant to this appeal. Due to this uncertainty and their early stage, limited weight can be attached to them.* This appeal decision did not take account of the Submission of the SWDP.
- 3.26 In a very decent appeal decision (APP/J1860/A/13/2190068), again at **Hangmans Lane, Hanley Castle** dated 8 August 2013 the Inspector did not discuss the targets in detail but stated that: *"There is evidence to suggest that there is not a 5 year housing land supply locally, in which case the housing policies of the LP would be out of date and the provisions in paragraph 14 of the Framework would apply."* The evidence referred to was the South Worcestershire Development Plan Proposed Submission Document 11 January 2013 paragraph 35 which showed a 4.92 years supply based on the April 2012 HLAM which in turn used the August 2012 SWDP Proposed Significant Changes target.
- 3.27 In the **Rushwick** appeal decisions the Inspector appeared to put unlimited weight on some of the emerging SWDP policies, in particular SWDP 15 on affordable housing, whereas by contrast, he put less weight on SWDP 14 (Housing Mix) and stated *"it constitutes a policy itself subject to objection and a component of an emerging plan yet to be examined, found sound or formally adopted; this necessarily limits the weight that may be apportioned to it in any judgement..."*. This is at odds with his seeming acceptance of SWDP 15, which is also subject to representations.
- 3.28 The Council awaits decisions on a number of relevant housing appeals. In its closing submissions at the public inquiry for the appeal at **Mistletoe Row, Tenbury** (APP/J1860/A/13/219904) the Council argued that *"As to the 'target', there is no up to date figure in an adopted development plan. It is therefore necessary to derive a figure from elsewhere, a figure that accords with the approach in ¶47 and ¶159 of the NPPF. The figure adopted must be "objectively assessed". The appellants' case is that this means that it must be "independently tested at independent examination". It is submitted that this is to re-write the Framework; if the Secretary of State had meant to say that he could have said so."*
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- 3.29 In the light of the above and taking account of the other recent appeal decisions, i.e. in the absence of an appeal decision contradicting this stance, it is considered that the SWDP housing requirement figures remain the preferred starting point for the 5 year housing land supply calculations.

Annualising the Target

- 3.30 The SWDP housing requirement is phased under policy SWDP 3, such that housing numbers are front-loaded at the beginning of the plan period, dropping off after 2013 before increasing at the end of the plan period after 2019. These phasing assumptions are based on information from landowners and developers that at the time was aspirational. The SWDP also illustrates the expected rate of delivery through a housing trajectory for each sub area.
- 3.31 Evidence is rarely robust enough to indicate precise yearly housing requirements, but instead assesses requirements over the plan period and any likely peaks and troughs within this timeframe. Phasing in plans is generally set out in large 5+ year bands and is used to illustrate and to help monitor and manage overall delivery over the plan period. Fluctuations in the local housing market and delivery issues on individual sites makes it difficult to assess from any individual year's monitoring, whether any intervention is actually required. Phasing is not normally intended to be prescriptive and trying to assess the 5 year land supply against phasing is difficult in that more often than not the 5 years will straddle phases and you would then need to annualise figures within each phase - which cuts across the essence of phasing. For these reasons, 5 year housing land supply is normally calculated using an annualisation of the overall plan target as it is that which is identified to meet the housing requirements. Monitoring over phases will still occur to ascertain whether any intervention is required.

4 Previous performance and implications for future supply target

- 4.1 The Framework requires that where there has been 'a record of persistent under delivery of housing', local planning authorities should increase the 5% target buffer to 20%. 'Persistent under delivery' is not defined in the Framework but appeal precedent is suggesting this should be numerically significant and look back over the previous five years against the targets in force at that time.
- 4.2 In addition to assessing whether the Council is a 5% or 20% authority, there is a question as to whether any target is annualised (divided evenly over the plan period)

or phased, and whether and how any previous over or undersupply should be addressed. There are two common approaches used.

- 4.3 The **'Liverpool'** approach takes housing completions to date off the overall plan target, leaving a residual target which is then spread out (normally on an annualised basis) over the remaining plan-period. This approach helps spread out the peaks and troughs of housing provision, over which the council has limited influence. This approach also recognises that targets are often identified to be met over the plan-period and that annual targets are often only 'indicative'.
- 4.4 The **'Sedgefield'** approach assesses housing completions for the plan period to date against the target for that period (which itself may be based on totalling up the annualised requirements) and then adjusts the targets for the next 5 years to take account of this performance (you would theoretically then be 'back on track' at the end of the 5 year period rather than at the end of the plan period - assuming it is more than 5 years away). This has tended to be the approach favoured at recent planning appeals, normally to take account of past undersupply. On one level this method makes sense to 'get you back on track'. However, where an under delivery exists, it does tend to lead to peaks of permissions, and where an authority cannot demonstrate a 5 year housing land supply but has sufficient sites to meet the overall plan period requirements, it can result in the release of less sustainable sites in advance of, and to the detriment of the delivery of, preferred sites identified in the development plan that the community have been involved in preparing. This may not actually deliver more houses, as where undersupply has been as a result of recession, sites may simply be 'land banked' until market demand picks up. Alternatively, housing may be built ahead of related employment development and community infrastructure, meaning that a balanced approach to housing and employment delivery is not achieved.
- 4.5 Appeal decisions are tending to favour the Sedgefield approach.
- 4.6 At the Rushwick appeal, paragraph 27 of the Inspector's report is ambiguous in stating "*They [the Rushwick sites] would deliver a sustainable mix of market housing in an authority that has very significantly underperformed in that task on a persistent basis, and which presently cannot demonstrate a 5 year supply of housing land, all in the absence of a tested and adopted local development plan*". The reference to persistent underperformance appears to relate to the mix of market housing rather than 5 year supply. There is no specific or clear reference to MHDC being a '20% authority'.

4.7 Past delivery figures are set out in the HLSM and is not considered that the Council has a record of persistent under delivery and is therefore a 5% authority, not a 20% authority.

5 Calculating the Supply

- 5.1 Once the target is identified, authorities need to assess which sites can be included in the supply. There is no clear advice in the Framework or other current guidance as to what can be included other than sites with planning permission can normally be included. In a post-Framework appeal at Cheltenham (20 Jun 2012 - APP/B1605/A/11/2164597) the inspector stated that “*The calculation of housing land supply is not an exact science and I see no need to treat it as such*” and most inspectors are not being prescriptive over the calculations and are recognising the different but valid methodologies.
- 5.2 To be included in the supply, however, sites must be considered deliverable within the 5 year period. Sites with outstanding planning permissions and allocations (without planning permission) are normally included - in so far as they would deliver housing in the next 5 years.
- 5.3 A recent ‘recovered’ appeal decision at Oaklands, Ersham Road, **Hailsham** on 18 June 2013 (APP/C1435/A/12/2186147) has confirmed that sites without the benefit of planning permission can be included in the supply, if they can be shown to be deliverable within the 5 year period stating: “*The Secretary of State notes the difference of opinion between the Council and the Appellant about the supply of housing land and the debate at the Inquiry regarding Footnote 11 to Paragraph 47 of the National Planning Policy Framework and whether a site has to benefit from outline planning permission in order to be considered “deliverable” [IR154]. He agrees with the Inspector’s view that there is nothing in the wording that says that sites without planning permission should be excluded as a matter of principle.*”
- 5.4 A High Court Judgement in the case of Wainhomes (South West) Holdings limited v the Secretary of State for Communities and Local Government (Case CO/122207/2012) issued on 25 March 2013 also confirms that sites without planning permission can be included in supply if it can be demonstrated that they are deliverable.
- 5.5 The Framework precludes and/or discourages the inclusion of some types of site which will contribute to supply i.e. garden land in built up areas and greenfield

windfalls, although of course once granted planning permission these can be included - in so far as they would deliver housing in the next 5 years.

- 5.6 The Framework allows for a brownfield windfall allowance if there is “*compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply*” (para 48).
- 5.7 There is no guidance as to what stage ‘proposed allocations’ can be included – this depends on the weight to be afforded to the emerging plan. Proposed allocations would normally be sites identified initially in the SHLAA.
- 5.8 In the case of the proposed housing land allocations within the SWDP, given that the Plan has now been submitted for Examination and in the light of the earlier discussion about the SWDP target being the starting point and the clear direction of the Framework, it is a reasonable stance to include certain housing land allocations within it for the purposes of calculating 5 year housing land supply. The sites and numbers included are subject to pre-application discussions and / or planning applications and are considered to be deliverable (see HLSM).
- 5.9 Some LPAs include SHLAA sites that have no planning permission or proposed allocation, but this is not considered appropriate in Malvern Hills District.
- 5.10 The Council’s closing submissions at the recent appeal at Mistletoe Row, Tenbury set out the Council’s interpretation of the Framework policy as to which sites can be included in the supply as deliverable (as defined in footnote 11 to paragraph 47 of the Framework):
- a. “*available now*”: there is no requirement for a grant of planning permission for a site to be considered available now. It means that if there was planning permission there is no other legal or physical impediment integral to the site that would prevent immediate development.
 - b. “*offer a suitable location for development now*”: a site with planning permission is ‘suitable’. A site allocated in a development plan is suitable unless there is specific evidence to suggest planning permission is unlikely to be forthcoming. Allocation in an emerging DPD is evidence of suitability, although the outcome of a particular planning application cannot be guaranteed.
 - c. “*be achievable with a realistic prospect that housing will be delivered on the site within five years*”:

(1) Sites with planning permission start with a presumption of deliverability according to the Framework.

(2) Other sites, including those allocated in a DPD, require site specific justification, but the fact of their allocation is a starting point for evidence of deliverability.

(3) Evidence of pre-application discussions with officer support, or planning applications on SWDP sites, is further evidence to which weight can properly be given.

6 Decision Making and the 5 Year Supply

6.1 The Rushwick appeal decisions and costs decision make it clear that the Council needs to decide if it can demonstrate that it has a 5 year land supply, and if not, clearly weigh this matter in determining all relevant applications. The Inspector considered that this was not made clear by the Council in its decisions on the Rushwick applications and stated in his decision.

“There can be little doubt as to the significance of being able to demonstrate a five year housing supply when planning applications and appeals are considered against the policies of The Framework” (Costs decision para.8).

6.2 The Rushwick Inspector stated that *“In evidence and at the Inquiry the Council accepted that it could not demonstrate a five year supply of housing land, asserting that this does not constitute a material issue in these cases. In accordance with the expectation of paragraph 49 of The Framework (notwithstanding the Council’s view on the materiality of the supply issue) in these circumstances relevant policies for the supply of housing can no longer be considered up-to-date. The Council in part seem to accept this, opting not to cite saved policies DS14 and DS1 of the MHDLP in their deemed refusal notice. The acknowledged out-of-datedness of such policies in-turn triggers the consideration set out in the fourth bullet point of paragraph 14 of The Framework, which anticipates decision-makers granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole. It is in this context that those adverse impacts, or harm are identified as main issues, which are in turn then considered against any identified benefits of the schemes, with the whole considered in a balancing exercise to conclude.”*

6.3 This implies that the Inspector considered that if the Council could demonstrate a 5YHLS, the local plan housing supply policies would not be ‘out of date’ and on this basis, and with no case law or clear appeal precedent to the contrary, the Council

considered, as set out in the IPS, that the fourth bullet of paragraph 14 would not be automatically triggered for all applications for the supply of housing. His view is also echoed by the Inspector at the recent Hanley Castle appeal referred to at para 3.25 who stated that: *“There is evidence to suggest that there is not a 5 year housing land supply locally, in which case the housing policies of the LP would be out of date and the provisions in paragraph 14 of the Framework would apply.”*

6.4 In the appeal at Kings Sutton, the Inspector in paragraph 36 of her report said of the Local Plan: *“The Framework does not change the statutory status of the development Plan as the starting point for decision making. In this case, the Local Plan is the development plan for the area. Although, in respect of Paragraph 14, I consider that the Local Plan is absent, with regards to housing targets for the District, and paragraph 49 says that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, I am satisfied that the underlying aim of Local Plan Policies G2, H6 and EC2 and the IRHPP remain relevant, given their focus of directing development to the most sustainable locations.”*

6.5 The IPS did make clear that the 5YHLS position does affect the weighing of development plan policies and the other material considerations, and where, *inter alia*, a 5 year supply is not demonstrated, paragraph 14 of the Framework states that permission should be granted permission unless:

“— any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

— specific policies in this Framework indicate development should be restricted.”⁵

6.6 The Council’s closing submissions at the recent the Mistletoe Row, Tenbury appeal stated: *“The development plan is not “absent”. With regard to ‘housing’ the development plan is not “silent”; however, as the Local Plan was prepared to meet housing requirements to 2011, policies relevant to housing are therefore “out-of-date”. ¶14 of the NPPF thus advises that planning permission should be granted (unless material considerations indicate otherwise) unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole”.*

⁵ *“For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”*

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- 6.7 Whether or not the Council can demonstrate a 5 year housing land supply, the contribution that sites will make to meeting requirements and need (both market and affordable) should still be weighed against other material considerations in coming to a decision on relevant applications; and indeed the site in question may be one the Council is in part relying on to contribute to achieving a 5 year supply.
- 6.8 In the Rushwick costs decision, the inspector did however reiterate *“Of course accepting that you cannot demonstrate a five year supply of housing land does not automatically require you to grant planning permission, what it does require though is that you identify and quantify harm...”*.
- 6.9 Notwithstanding the advice of the Framework at paragraph 14, the planning system remains plan-led and planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration. There is a clear tension between the advice of paragraph 14 and the plan-led system set out in statute and also supported elsewhere in the Framework itself.
- 6.10 The polices of the emerging SWDP can be given some, albeit limited weight which may be of significance to the decision on any particular proposal and the particular polices to be relied upon.

7 Malvern Hills District Housing Land Supply Position

- 7.1 This latest Position Statement uses information set out in the Housing Land Supply Monitor (HLSM) August 2013, which monitors housing performance and supply up to 31 March 2013. This sets out monitoring information, the approach to calculating the supply components such as commitments, emerging allocations and windfall assumptions, and sets out supply information against the SWDP and Panel Report annualised targets.
- 7.2 The overall conclusion can be seen in Table 1 (extracted from the forthcoming HLSM) which that against the SWDP Proposed Submission Document target for Malvern Hills District (excluding the Wider Worcester Area) and including a buffer of 5%, the Council can demonstrate a 5.33 years supply of housing land under Sedgefield approach. The figures show the calculation using a 20% buffer, the Liverpool approach and against the Panel Report target for information.

8 Conclusion

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- 8.1 Based on the information contained in this Position Statement and the Council's supporting monitoring data it is considered that the Council can currently demonstrate a 5 year supply of land for housing based on **the emerging SWDP target and the evidence that underpins it**. Using the **Sedgefield approach** and allowing for a buffer of **5%**, the Council can demonstrate a **5.33** years supply of land for housing.
- 8.2 The situation will be kept under review

Table 1: Five year land supply against SWDP Proposed Submission Document target (Preferred Target) and WMRS Phase 2 Review Panel Report for Information

Five Year Housing Land Supply requirements (1st April 2013 to 31st March 2018)		SWDP SUBMISSION TARGET 2006 – 2030 (24 years)		WM RSS PANEL REPORT 2006 – 2026 (20 years)	
		COLUMN 1: 'SEDFIELD' METHOD	COLUMN 2: 'LIVERPOOL' METHOD	COLUMN 3: 'SEDFIELD' METHOD	COLUMN 4: 'LIVERPOOL' METHOD
Plan Period Target		4,900 (204 per annum)		5,000 (250 per annum)	
Completions to Date		1,502		1,502	
Residual Target		3,398	3,398	3,498	3,498
Over/Under Supply		74 oversupply	n/a	248 undersupply	n/a
Five Year Target		947 (204 x 5 – 74 = 189 per annum)	1,000 (3,399 ÷ 17 years remaining = 200 residual annualised)	1,499 (250 x 5 + 248 = 300 per annum)	1,030 (3,499 ÷ 17 years remaining = 206 residual annualised)
Five Year Target +5%		993 (199 per annum)	1,050 (210 residual annualised)	1,573 (315 per annum)	1,082 (216 residual annualised)
Five Year Target +20%		1,135 (227 per annum)	1,200 (240 residual annualised)	1,798 (360 per annum)	1,236 (247 residual annualised)
Commitments (Net)	(Outstanding)	(362) 345 <i>(8% lapse rate – not applied to adopted local plan sites with planning permission)</i>	(362) 345 <i>(8% lapse rate – not applied to adopted local plan sites with planning permission)</i>	(362) 345 <i>(8% lapse rate – not applied to adopted local plan sites with planning permission)</i>	(362) 345 <i>(8% lapse rate – not applied to adopted local plan sites with planning permission)</i>
	(Under Construction)	103	103	103	103
	Total	448	448	448	448
Local Plan Sites (H4 and H10)		21	21	21	21
Windfall Allowance (Brownfield) Gross		102 (34 per annum for current 5 year period – 3 out of 5 years)	102 (34 per annum for current 5 year period – 3 out of 5 years)	102 (34 per annum for current 5 year period – 3 out of 5 years)	102 (34 per annum for current 5 year period – 3 out of 5 years)
Proposed SWDP Site Allocations*		433	433	433	433
Phase 7 Malvern Vale**		58	58	58	58

Total Supply	1,061	1,061	1,061	1,061
Balance	114	61	-438	31
Years supply	5.61	5.31	3.54	5.15
Balance	68	11	-512	-21
Years supply (+5%)	5.33	5.05	3.37	4.91
Balance	-74	-139	-737	-175
Years supply (+20%)	4.67	4.42	2.95	4.30

**Select Site Allocations in the SWDP that either have planning permission post-31st March 2013, are at the planning application stage, or are at the pre-application stage (sites included monitored up to 31st July 2013).*

***Additional residential phase granted planning permission on 10th April 2013 for 58 dwellings (12/01240/FUL). This permission would take the total number of dwellings on the North Site up to 548 if the maximum number approved were built out.*