



**Follow up work in relation to the
Examination into the King's Lynn and West
Norfolk Local Plan: Site Allocations and
Development Management Policies**

**Appeal decisions at Clenchwarton and related material on
housing delivery / 5 year land supply**

October 2015

Document reference no.	
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This note supplements the Council's position as set out in CD30 and CD 34.

A copy of the decision at Fosters Sports Ground, Main Road, Clenchwarton, Norfolk, PE34 4BP (APP/V2635/A14/2219315) and a note of the judgement in the subsequent High Court proceedings (CO/914/2015) is attached as Appendix 1 and 2.

The Inspector will be aware that an appeal to the High Court against the decision of the Secretary of State must be based on a point of law relating to the Inspector's decision.

The Inspector will similarly be aware that that *"it is not for an inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done"* (City Council and District of St Albans v SSCLG and Hunston Properties [2013] EWCA Civ 1610). (Attached as Appendix 3).

This legal judgement was reflected in amendments to the Planning Practice Guidance made by the Secretary of State on 27/03/2015 in which he said *"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."*

This approach was not followed in the Clenchwarton judgement (which predated the changes to the planning practice guidance) where the Inspector preferred the Appellants methodology in assessing need.

It is important to note that this was not a full assessment of objectively assessed need which is more appropriately done in relation to the Core Strategy. Indeed, a different Inspector had come to a different conclusion (i.e the Council could demonstrate a 5 year supply) on the **same** site in November 2012 which demonstrates the speed in which data used for the calculations is superseded.

The Council has more fully set out its approach to flexibility in relation to the housing land supply in CD 30 and 34, and in practical terms this has seen a significant rise in the number of applications coming forward for consideration and the number of permissions being granted.

In addition the Council has commissioned a "health check" of the FOAN as detailed in CD34 to ensure that the figures that the FOAN is based on are as accurate and up to date as possible. This work demonstrates that the Council does in fact have a 5 year supply.

In essence the task of the current Examination is not to reassess the housing land requirements or to look in detail at the FOAN – that is outside the scope of the submitted plan and this Examination and will be one of the tasks of a subsequent Examination of the next Local Plan.

Appeal Decision

Hearing held on 10 December 2014

Site visit made on 10 December 2014

by K D Barton BSc(Hons) Dip Arch Dip Arb RIBA FCI Arb

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2015

Appeal Ref: APP/V2635/A/14/2219315

Fosters Sports Ground, Main Road, Clenchwarton, Norfolk PE34 4BP

- The appeal is made under section 78 of the *Town and Country Planning Act 1990* against a refusal to grant outline planning permission.
 - The appeal is made by Elm Park Holdings against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 13/01123/OM, dated 27 July 2013, was refused by notice dated 22 November 2013.
 - The development proposed is "a residential development of up to 40 dwellings of which 8 would be affordable. All matters are reserved other than access".
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Decision

1. The appeal is allowed and outline planning permission is granted for "a residential development of up to 40 dwellings of which 8 would be affordable. All matters are reserved other than access", at Fosters Sports Ground, Main Road, Clenchwarton, Norfolk PE34 4BP in accordance with the terms of the application, Ref 13/01123/OM, dated 27 July 2013, subject to the conditions in the attached schedule.

The Site and its Surroundings

2. The appeal site is located approximately 1 kilometre to the east of the junction of Main Road and Hall Road in the centre of Clenchwarton where existing services and facilities are located. The site, which has an area of around 1.43 hectares, lies within the countryside, as defined in the *King's Lynn and West Norfolk Local Plan 1998 (LP)* and the *King's Lynn and West Norfolk Borough Council Local Development Framework - Core Strategy (2011) (CS)*, and is not previously developed land as defined by Annex 2 of the *National Planning Policy Framework (Framework)*. Access is between 41 Main Road and a commercial garage on the southern boundary and the site borders Nos 30-40 Coronation Road to the east. An illustrative plan indicates landscaping could be provided on blue land between the northern boundary of the appeal site and the 'north field' of the former Fosters Sports Ground to the north, and on blue land to the west of the site.

Housing Land Supply

3. An outline application for up to 75 dwellings on a larger site at the Fosters Sports Ground (APP/V2635/A/2175128) was dismissed at appeal in November 2012. Whilst this is a material consideration, and reference has been made to it in this decision, there are differences between that scheme and the appeal

proposal, not least the number of units proposed and the extent of the site. Each case should be considered on its own merits.

4. Paragraph 215 of the *Framework* states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the *Framework*. Paragraph 49 sets out 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".
5. There are a number of differences between the main parties in terms of housing land supply, but they agree that, in the light of *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* and the publication of the *Planning Practice Guidance (Guidance)*, the 'Sedgefield' method should be preferred.
6. The Council considers the CS figure of 16,500 dwellings in the period 2001 to 2026 (660 dwellings per annum) to be the correct requirement and claims that the 2013 Strategic Housing Market Assessment (SHMA) update still supports that as a realistic figure. The Council's methodology was used in the previous appeal relating to 75 dwellings and was not challenged in the High Court. However, the CS is based on what are now old household projections. Indeed, the Council notes that the *Framework* "makes reference to keeping plans up to date and therefore under review" and the Inspector in the previous appeal states at paragraph 12 of her decision, issued in November 2012, that "The Council will need to re-visit its housing provision in the light of more recent household projections, and to keep its housing supply in line with the evidence base in the future". That is the approach adopted by the appellant in this case.
7. Indeed, the SHMA explains that there would be a requirement of 690 households per annum. Households do not equate to dwellings and allowance should be made for vacancies and second homes. The 2011 census records that King's Lynn has 14.9% vacancies and second homes, which would give a full objectively assessed need (FOAN) of 793 dwellings a year. If, as a minimum, only vacancies are considered, it is generally recognised that a figure of 3% be used giving a requirement of 711 dwellings per annum. A minimum of 51 additional dwellings a year, and possibly as many as 133, over and above the CS requirement of 660 does not suggest that the CS requirement is still realistic. Indeed, over a 15 year period that equates to a minimum need for in excess of 750 additional dwellings.
8. Considering the appropriate buffer to be applied, *Framework* paragraph 47 indicates that a 5% buffer should be added "to ensure choice and competition. However, where there has been a record of persistent under delivery the buffer should be increased to 20%. The *Guidance* confirms that there is no universal test for persistent under delivery and sets out that the assessment of local delivery is likely to be more robust if a longer term view is taken.
9. In each of the last six years the Council has failed to achieve its requirement of 660 dwellings per annum and has only averaged 447 dwellings a year. The Council notes that the trend from 2001 to 2014, which includes the recession between 2008 and 2013, is running at 622 dwellings per annum. Although development rates are rising, and the Council published its *Pre-Submission Site Allocations and Development Management Document* in October, which it is

acknowledged would release the full plan provision of new sites, the long term trend is behind the target of 660 dwellings per annum with a shortfall of some 487 dwellings in the period to date. This indicates that the Council has persistently under provided and so a 20% buffer should be applied.

10. Turning to whether a further 10% discount should be applied, the Council does not consider that a further 10% is needed as the CS included a 10% allowance for "flexibility and non-completion of commitments" and all sites in the Trajectory have been subject to discounting by basing delivery figures on either developer's responses or local evidence of delivery rates. Given the under delivery, there is little flexibility in the figures. Moreover, in terms of non-completion, Officers are heavily dependent on the quality of third party information and not all respondents might have the same aims as the Council. There is likely to be an element of uncertainty and, notwithstanding the view of the Inspector in the previous appeal at the Sports Ground, the application of a further discount would make the assessment more robust. 10% as suggested by the appellant has been supported in decisions elsewhere and, in the absence of any justified alternatives, a 10% discount would be appropriate in this case.
11. In relation to windfalls, paragraph 48 of the *Framework* states that an allowance can be made in the five year supply if there is compelling evidence that such sites have consistently become available in the local area, and will continue to provide a reliable source. Between 2001 and 2014, 49% of total completions in the Borough were from windfall sites, and 59% of those were from large sites of more than 10 dwellings. Given that the Council is seeking to adopt a new policy to allow infilling in the smaller villages and hamlets, small sites are likely to continue to provide a reliable source of windfalls. However, given the publication of the *Pre-Submission Site Allocations and Development Management Document* releasing the full plan provision of new sites, it is likely that the majority of large sites would come from allocations. Rather than there being compelling evidence, as the *Framework* requires, there is at best only a possibility that some completions would come from large site windfalls and these should therefore be discounted.
12. The appellant raised three queries relating to permissions. Whilst 302 dwellings are under construction at Hillingdon Square, the net result of development is the loss of 17 units. The Council accepts this and -17 is now included in the Housing Trajectory. Secondly, in respect of the Nar Ouse Regeneration Area (NORA), the appellant considers that only 300 of the 554 with outline planning permission are likely to be completed in the 5 year period. Whilst Reserved Matters permissions were granted for a further 185 on 1 December 2014, and a preferred bidder has been approved to deliver 600 units by 2020 on Council and Homes and Community Agency land, there is little evidence to counteract the appellant's view. Finally, permission on a site north of Gaywood River, King's Lynn has lapsed and an application for 95 dwellings was subsequently refused although a revised application has just been resubmitted with the applicant claiming to have overcome the outstanding reason for refusal from appeal. The parties disagree on the figures but again the appellant's are more robust, despite the Council's view that the Guidance on what are deliverable sites would give greater flexibility and add to the potential 5 year supply of sites.
13. Given the conclusions above, the appellant's calculations are preferred and show that rather than having a 7.51 years supply (based on the CS and a 5%

buffer) as the Council maintains, there would only be a 1.91 year housing supply (based on 2011 housing projections and a 20% buffer). Notwithstanding the Council's view that the policies in the CS are consistent with the *Framework*, as there is no 5 year supply the housing policies, including policies defining settlement boundaries, cannot be regarded as up-to-date. Housing applications should, therefore, be considered in the context of the presumption in favour of sustainable development, in accordance with the aims of the *Framework*.

Sustainability

14. I note the concerns of local people, supported by Henry Bellingham MP, that development outside the village boundary would not be sustainable and could lead to urban sprawl linking to King's Lynn. Paragraphs 7 and 8 of the *Framework* set out three dimensions to sustainability: economic; social; and environmental, which are mutually dependent, whilst paragraph 14 sets out that at the heart of the *Framework* is a presumption in favour of sustainable development.
15. Considering the environmental role, the appeal site is a Greenfield location about 1 kilometre from the village centre and it lies outside the development boundary for Clenchwarton. However, the development boundary must be considered out of date, due to the lack of a 5 year housing land supply. Provided the proposal maintains the sporadic nature of development around the village the proposal would not lead to coalescence of settlements and any environmental impact would be minimised.
16. Moreover, Clenchwarton is identified in the CS as a Key Rural Service Centre and CS Policy CS01 states that residential development should be encouraged "within or adjacent to these selected Key Rural Service Centres". In this case, the site has been considered and rejected by the Council as a housing allocation site, partly due to distance from the 'heart' of the village and the fact that it was not adjoining the village boundary, which is now out of date.
17. In economic terms, even though around 1 kilometre from the services and facilities at the 'heart' of the village, the proposed development would help sustain them and contribute to their vitality and viability. In social terms, although it is accepted that any infrastructure contributions would be mitigation rather than a benefit, the development would contribute by providing 40 needed houses, eight of which would be affordable, to help satisfy local need. When all three dimensions are considered together the site would be sustainable.

Effect on the Character and Appearance of the Countryside

18. The character and appearance of Clenchwarton and its surroundings is that of a small village with several sporadic pockets of development around, but outside, the main settlement. Further afield there is flat agricultural land. The appeal site has not been used for sports activities for some years and is vacant and largely unused. The proposal would lie outside the main settlement, as defined in both the LP and CS, although these policies must be regarded as out of date.
19. The proposed scheme would adjoin the rear boundaries of properties in Coronation Road and a few properties on Main Road, but unlike an earlier scheme for 75 houses (APP/V2635/A/12/2175128) on a larger site, it would not

consolidate the existing sporadic development to the extent that it would alter the perceived character and appearance of the area around the main village by consolidating or urbanising the area. This is because views into and out of the site are very limited due to the existing hedges, a fact accepted by the Inspector in the previous appeal. An illustrative layout, master plan, and section, demonstrate that the site could be developed with dwellings set away from the access such that the houses, whilst not hidden, could be screened and would not be conspicuous, even given the need to raise site levels locally around the houses and to set the FFL at 3.25 metres AOD. The character and appearance of sporadic pockets of development outside the main village would be maintained.

20. The previous Inspector concluded that it had not been demonstrated that the development, incorporating the flood mitigation measures as in this case, would be effectively screened within the wider landscape. That is not the case in this appeal, as set out above, due at least in part to the reduced number of dwellings proposed and their location some distance from the access.

Flood Risk

21. The site is located in Flood Zone 3 (Tidal) and a Hazard Zone as defined in the *King's Lynn and West Norfolk Strategic Flood Risk Assessment (SFRA)*. The *Tidal River Hazard Mapping Protocol 2012* also defines the site as at high risk of flooding. In the event of an overtopping/breach of the defences of the Great River Ouse the site could be flooded up to a depth of one metre.
22. Paragraph 14 of the *Framework* indicates that where the development plan is absent, silent, or relevant policies are out of date, planning permission should be granted unless, amongst other matters, specific policies in the *Framework* indicate development should be restricted. Footnote 9 to paragraph 14 notes that such specific policies include those relating to locations at risk of flooding.
23. The previous appeal decision relating to the site concluded that the 75 dwelling scheme conflicted with the advice in *Framework* paragraph 102. *Framework* paragraph 100 refers to applying a sequential, risk-based approach whilst paragraphs 101 and 102 relate to Sequential and Exceptions Tests, the latter of which has two limbs, both of which must be satisfied.
24. Paragraph 101 states that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Although the Council maintains that there are sequentially preferable sites adjacent to the village, as they are in Flood Zone 3 but not a Hazard Zone, both the village and the site are protected by the same flood defences against a 1 in 200 event, inclusive of climate change. Both must, therefore, have the same risk of flooding and there is no sequential preference between them.
25. The Hazard Zone falls to be considered under the Exception Test. *Framework* Paragraph 102 sets out two limbs for the Exception Test. Firstly: the development should provide wider sustainability benefits to the community that outweigh flood risk; and secondly, a site-specific flood risk assessment (FRA) must demonstrate that the development should be safe for its lifetime taking into account the vulnerability of its users without increasing flood risk elsewhere, and where possible, reduce flood risk overall.

26. In terms of sustainability benefits for the community, the provision of houses would support employment, and the vitality and viability of local shops whilst preserving the character and appearance of the area. On balance, they outweigh the risk of flooding. Turning to the second part of the Test, despite the site being in a Hazard Zone, both the Environment Agency (EA) and the Council accept that the site could be made 'safe', provided that suitable mitigation measures were provided. A topographical survey indicates levels of 2.2-2.3 metres across the site and the EA's hazard mapping shows flood depths across the site of up to 1m. Mitigation would consist of raising the level of both the site and the ground floor. Whilst reference was made to finished floor levels (FFL) of 3.10m AOD, EA refers to this as an error and it was confirmed that EA would be satisfied with a FFL of 3.25m AOD as identified in a site specific FRA. This could be ensured by condition. The area that would flood is so large that displacement of flood waters due to the raised levels would be insignificant and there would be no increased flood risk elsewhere.
27. Whilst this interpretation differs from that adopted in the earlier appeal relating to 75 dwellings, it is noted that the approach to the application of the Tests in this case is in line with a legal opinion obtained by the appellant. This concludes that the correct interpretation of the Sequential Test is only concerned with the probability of flooding and not the consequences, which are dealt with elsewhere in the 'safe' element of the Exceptions Test.
28. The proposal would comply with the aims of Chapter 10 of the *Framework* and CS Policy CS08.

Other Matters

29. Affordable housing is proposed and the parties agree that this could be ensured by the use of a condition, although that is not the Council's preferred method. Whilst the Parish Council note that this would not fully meet the local requirements, the local planning authority states that the provision of 8 units would be acceptable. Despite concerns about traffic generation the highway authority raised no objection but required additional information about the access. A Grampian condition could ensure that off-site works for the improvement of the proposed access junction are undertaken. A completed Section 106 Unilateral Undertaking has been submitted and makes provision for payment of contributions towards education and library facilities, and the provision of on-site Open Space. The County Council submitted justification for the contributions to demonstrate that they would meet the tests in *Community Infrastructure Levy (CIL) Regulation 122*.
30. There is a concern that services are over subscribed and local children have to go elsewhere to school but the contributions secured by the S106 Undertaking, albeit a one off payment, are designed to reflect the impact that the development would have on local services. Whilst local residents are concerned that the site has been left to deteriorate that is not a matter for this appeal, nor is the matter of insurance costs in flood risk areas. Although the land was Grade 2 agricultural land before it was used as a sports ground there is no requirement it be returned to agricultural use. The site has become a haven for wildlife to some extent but the landscaping and Open Space that would be provided could maintain provision for wildlife.
31. Local residents raised concerns about layout and appearance but these are reserved matters for later consideration. Reference has been made to a

number of previous decisions and judgements. Many of these have different circumstances in terms of the status of the local plan and the existence or otherwise of a 5 year supply of land. Consequently little weight has been given to them and the appeal has been determined on its own planning merits.

Planning Balance

32. Although the site is at risk of flooding, both the Council and the EA consider it could be made safe. The provision of 40 houses, 8 affordable, would help sustain local employment and the vitality and viability of the Key Rural Service Centre, albeit they would be around a kilometre from the heart of the village. On balance the appeal should be allowed.

Conditions

33. Suggested conditions 1 to 4 reflect the standard commencement conditions relating to outline permissions, although suggested conditions 1 and 2 have been amalgamated. Landscaping is a reserved matter but suggested condition 5 clarifies what information is required and should be attached.
34. Suggested conditions 6 to 9 inclusive relate to flood risk and would be necessary to ensure that mitigation measures, including specific levels, were provided together with details of flood resilient/resistant construction measures and flood barriers at entrances/doorways. Given the location in Flood Zone 3 details of foul, surface, and land drainage should also be provided.
35. Due to the rural nature of the area, details of outdoor lighting should be required to minimise light pollution. Similarly, to safeguard the living conditions of nearby residents during construction, a Construction Environmental Management Plan should be submitted for approval. In the interests of safety a scheme for the provision of fire hydrants should also be required.
36. Finally, suggested conditions 12 to 16 inclusive relate to highway safety. Details of roads, footways and their drainage are necessary and no dwelling should be occupied until the roads and footways serving it have been constructed to binder course level. A scheme for the management and maintenance of the streets within the development prior to any agreement under the Highways Act, or establishment of a Private Management and Maintenance Company, should also be required. Details of off-site improvement works are necessary to make the access to the site acceptable and no dwelling should be occupied until the approved details have been implemented.

K D Barton

INSPECTOR

Schedule of Conditions

APP/V2635/A/14/2219315

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Plans and particulars submitted in accordance with Condition 1 shall include:
 - a) A plan indicating the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing clearly which trees are to be retained and which trees are to be removed, and the crown spread of each tree; and
 - b) Details of the species, diameter, approximate height and condition of each tree in accordance with BS:5837:1991, and on each tree which is on land adjacent to the site where the crown spread of that tree falls over the application site and where any tree is located within half of its height in distance from the application site.
- 5) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Ref 132042-R02 (00) dated May 2014 and the mitigation measures detailed in the FRA including that the finished ground floor levels shall be set no lower than 3.25m AOD.
- 6) Prior to the commencement of the development, a scheme for the provision and implementation of flood resilient/resistant construction methods shall be submitted to, and approved in writing by, the local planning authority. This shall include the provision of flood barriers to be installed on all entrance/doorways. The works/scheme shall be constructed and completed in accordance with the approved plans/specification at such time as may be specified in the approved scheme.
- 7) No development shall take place until full details of the foul and surface water drainage arrangements for the site have been submitted to, and approved in writing by, the local planning authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is occupied.
- 8) No development shall take place until full details of the land drainage arrangements for the site have been submitted to, and approved in

- writing by, the local planning authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is occupied.
- 9) No development shall take place until a detailed outdoor lighting scheme has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall include details of the types of lights, the orientation/angle of the luminaries, the spacing and height of lighting columns, the extent/levels of illumination over the site and on the adjacent land, and measures to contain light within the curtilage of the site. The approved scheme shall be implemented and thereafter retained in working order.
 - 10) No development shall take place until a Construction Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be implemented during the period of construction.
 - 11) No development shall take place until details of arrangements for future management and maintenance of the streets within the development have been submitted to, and approved in writing by, the local planning authority. The streets shall thereafter be maintained in accordance with the approved details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.
 - 12) No development shall take place until detailed plans of the roads, footways, foul and surface water drainage have been submitted to, and approved in writing by, the local planning authority. All construction works shall be carried out in accordance with the approved plans.
 - 13) No dwelling shall be occupied until the roads and footways have been constructed to binder course surfacing level from the dwelling to the adjoining County road in accordance with details that have previously been submitted to, and approved in writing by, the local planning authority.
 - 14) Notwithstanding the details on the application drawings, no development shall take place until a detailed scheme for the off-site highway improvement works, as indicated on drawing no STH2713-007 A, has been submitted to, and approved in writing by, the local planning authority.
 - 15) No dwelling shall be occupied until the off-site improvements works referred to in condition 14 have been implemented in accordance with the approved scheme.
 - 16) No dwelling shall be occupied until a scheme for the provision of fire hydrants has been implemented in accordance with a scheme that has previously been submitted to, and approved in writing by, the local planning authority.
 - 17) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to, and approved in writing by, the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the *National*

Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 8 housing units;
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved);
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing, and the means by which such occupancy criteria shall be enforced.

APPEARANCES

FOR THE APPELLANT:

Richard Brown MSc	
Tony Bateman	The Pegasus Group
Jeremy Peachey	The Pegasus Group
Matt Cheeseman	RSK Group
Alan Wallis	Wallis Design

FOR THE LOCAL PLANNING AUTHORITY:

Peter Jermany	Principal Planning Officer
Hannah Wood-Handy	Principal Planning Officer

INTERESTED PERSONS:

Stephen Faulkner	Norfolk County Council
Laura Waters	Norfolk County Council
Richard Brown	Clenchwatton Parish Council
Mr M Collins	Local Resident
Mr R Collins	Local Resident
Kim Lyon	Local Resident
Paul Lyon	Local Resident
K Smart	Local Resident
James Drennan	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- Doc 1 Wainhomes (South West) Holdings Limited Judgement [2013] EWHC 597 (Admin)
- Doc 2 Replacement Table 2a Housing Supply from Updated Housing Trajectory as at 1 April 2014 from LPA's Statement 5 December 2014
- Doc 3 Council's response bundle dated December 2014



The Planning Inspectorate

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Ruth Redding
King's Lynn and West Norfolk
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PE30 1EX

Your Ref: 13/01123/om
Our Ref: APP/V2635/A/14/2219315
Date: 20 January 2015

Dear Ms Redding

**Town and Country Planning Act 1990
Appeal by Elm Park Holdings Limited
Site at Fosters Sports Ground, Main Road, Clenchwarton, King's Lynn,
Norfolk, PE34 4BP**

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planninginspectoratefeedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

Jacky Parsons

COVERDL1



Appendix 2

CO/914/2015

Neutral Citation Number: [2015] EWHC 2464 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 9 July 2015

B e f o r e:

MR JUSTICE DOVE

Between:

BOROUGH COUNCIL OF KINGS LYNN AND WEST NORFOLK_
Claimant

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT_
Defendant

And

ELM PARK HOLDINGS LTD

Second Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Timothy Leader (Marc Samuels for judgment only)(instructed by Borough Council of Kings Lynn) appeared on behalf of the **Claimant**

Zack Simons (instructed by Government Legal Department) appeared on behalf of the **Defendant**

James Corbet Burcher (Nina Pindham for judgment only) (instructed) appeared on behalf of the **Second Defendant**

J U D G M E N T
(Approved)
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1. MR JUSTICE DOVE: Clenchwarton is a village to the west of King's Lynn. In the July 2011 Core Strategy published and adopted by the claimant, it is identified as a key rural service centre which is suitable for local scale development. The claimant is the local planning authority for the area concerned and the second defendant is the owner of the Foster's Sports Ground, Main Road in Clenchwarton. It is a site towards the western end of the settlement within land designated countryside in the proposals map of the 1998 King's Lynn and West Norfolk local plan.
2. On the 2 November 2011 the second defendant applied for outline planning permission for 75 dwellings which was refused by the claimant and there was an appeal to the first defendant. That appeal was dismissed on 12 November 2012. The issues which were included in the determination of that appeal were whether or not the claimant could demonstrate a five-year supply of housing land. The Inspector in determining that appeal concluded as follows:
 - i. "8. Taking account of the housing completions between 2001 and 2011, there is a total five year housing requirement for 3,275 dwellings. Adding an additional 5% buffer, in accordance with paragraph 47 of the National Planning Policy Framework (framework). The 5 year requirement rises to 3,439 dwellings, which is equivalent to 688 dwellings per annum.
 - ii. 9. The Council's Annual Monitoring Report, December 2011, published in April 2012, identifies a supply of sites for 3,276 which equates to some 4.76 years' supply. However, paragraph 48 of the Framework permits making an allowance for windfall sites within the 5 year supply where Councils have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Given the Council's experience of the contribution of windfall sites to the housing supply over an 11 year period, together with the unusually

large geographical area of the Borough and the high number of settlements within the Borough, I accept that the Council's suggested allowances for windfall sites based on 70% of past rates, is realistic in this instance. On this basis, there is a deliverable housing land supply of around 6.03 years."

3. Following that decision, the second defendant reconsidered its position. It amended its proposal to 40 dwellings to respond to criticisms raised by the Inspector in respect of landscape impact. On 12 December 2013 the Court of Appeal decision in the case of City and District Council of St Albans v Hunston Properties Limited and the Secretary of State [2013] EWCA Civ 1610 was handed down with its implications in relation to the interpretation of paragraph 47 of the NPPF (hereafter "the Framework") to the housing requirement when calculating a five-year supply of housing. It is worthwhile at this stage to set out the relevant provisions of the Framework in paragraph 47 which are as follows:
 - i. "47. To boost significantly the supply of housing, local planning authorities should:
 - use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the planned period;
 - 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 to ensure choice and competition in the market for land..."

4. On 27 July 2013 the second defendant applied for outline planning permission for 40 dwellings. The application was refused on 22 November 2013 by the claimant and the second defendant appealed. The appeal was determined by one of the first defendant's Inspectors using the hearing mode of appeal determination. The procedures in relation to the hearing evolved in the following manner. Firstly, the second defendant's statement of case prepared in May 2014 arrived with the claimant in early June. Secondly, on 12 September 2014, the claimant prepared and submitted a response to that document. Thirdly, on 28 November 2014, the second defendant responded to the claimant's case in relation to housing land supply. Fourthly, on the 2 December 2014, the planning Inspectorate on behalf of the first defendant requested that the claimant clarify its position on the housing land supply evidence provided by the second defendant in a further submission due by 5 December 2014. Fifthly and finally, on 5 December 2014, the claimant submitted (in accordance with the request which had been made by the Planning Inspectorate) further documentation in support of its position in relation to housing land supply.
5. As will be evident from that chronology, once again the question of whether or not the claimant enjoyed a five year supply of housing land was in issue. A number of the ingredients of the calculation were, in particular, at odds between the claimant and the second defendant so far as is relevant to this case. They were as follows:
 - (a) The requirement. The claimant still relied upon the requirement from its Core Strategy as representing their Full Objectively Assessed Need for housing (FOAN) reliant on the Core Strategy housing figure of 660 dwellings per annum.

They had taken into account work which they had commissioned as a Strategic Housing Market Assessment (SHMA) and considered that it corroborated the figure which was in their Core Strategy. This SHMA exercise which was prepared as part of the evidence base for the emerging local plan showed a FOAN of 690 dwellings per annum. The second defendant's consultants contended that the SHMA analysis was incomplete and did not account for either existing unmet need (which had been deduced from the SHMA as standing at around 1500 dwellings at the time of the second defendant's analysis), or the rate of vacancies at a rate of 3 per cent derived from the 2011 census, or second homes together with the vacancies at a rate of 14.9 per cent (again derived from the figure for household spaces with no usual residents which was provided by the 2011 census data). Adding vacancies alone gave (in the second defendant's analysis) an annual figure of 711 dwellings per annum; adding vacancies and second homes gave a figure of 793 dwellings per annum and finally, adding an element of unmet need together with vacancies and second homes, gave a total figure of 872 dwellings per annum.

- ii. (b) The buffer. The second issue was whether the claimant was a five per cent or a 20 per cent authority. Although initially the second defendant's consultants had accepted that the claimant was a five

per cent authority, they subsequently contended for 20 per cent on the basis that in the previous 6 years the claimant had not met the Core Strategy requirement of 660 dwellings per annum, and that since 2001 the annual average of completions had been 622 dwellings per annum, again below the Core Strategy target. The claimant responded by pointing out that the 622 dwellings per annum figure covered a period of economic recession and further argued that development rates were rising as a result of the production of a site allocation document which was about to proceed to its pre-submission stage. A graph was produced by the claimant illustrating the broad correlation between completion rates and the Core Strategy requirements.

- iii. (c) The question of windfalls. By the time of the hearing, the differences between the claimant and the second defendant were as follows. The claimant, based on past trends, relied upon a supply from large windfalls of 670 dwellings and the second defendant allowed for none. In relation to small windfalls, again based on past trends, the claimant included 470 dwellings within their five-year supply and the second defendant, who had vacillated between a number of positions on this issue, finally decided to include 268 dwellings.
- iv. (d) Allocations emerging in the pre-submission Site Allocations and Development Management Document. These were also the subject of contention. They were contained in a document which had been

approved for consultation by the claimant on 27 November 2014.

That consultation was due to occur in January and February 2015.

The claimant included some 2,303 dwellings from this source of supply in their five-year calculation. The second defendant allowed none.

6. The hearing was allocated two days. At the hearing the Inspector led a discussion of the issues following an agenda which he had constructed for this purpose. The third issue on that agenda was housing land supply. When the claimant came to present its case following the submissions on behalf of the second defendant, it became clear that owing to computer problems the claimant's submissions of 5 December 2012 together with the supporting documentation had not in fact been received by the Inspector and he had not seen them. Copies were provided to him at the hearing. The Inspector chose to press on without adjourning to read the documentation. Mr Jermany who was not leading the counsel's case (which was in fact led by the case officer for the application, Mrs Wood-Handy) but who was its expert on housing land supply, records his concerns in relation to what occurred in a witness statement as follows:

- i. "I felt at a disadvantage trying to pick out relevant parts of my statement, without reading it in full, while knowing that Inspector had not had a chance to read it and had not had a chance to understand and review the supporting documents in advance and to properly question me and Hannah [Mrs Wood-Handy] about them."

7. It is apparent from a contemporaneous note provided by one of the second defendant's team at the hearing, that the discussion ranged over each of the disputed elements which I have set out above. In relation to the emerging

allocations, reference was made during the course of the of discussion to the case of Wainhomes (South West) Holdings Limited v Secretary of State [2013] EWHC 597 to which I shall turn shortly. In relation to the appropriate FOAN for consideration in calculating the five-year housing supply, mention was made of the case of Hunston Properties.

8. On 2 January 2015 the decision on the appeal was published and the appeal was allowed. The Inspector's conclusions on housing land supply were set out as follows.

- i. "6. The Council considers the CS figure of 16,500 dwellings in the period 2001 to 2026 (660 dwellings per annum) to be the correct requirement and claims that the 2013 Strategic Housing Market Assessment (SHMA) update still supports that as a realistic figure. The Council's methodology was used in the previous appeal relating to 75 dwellings and was not challenged in the High Court. However, the CS is based on what are now old household projections. Indeed the Council notes that the Framework 'makes reference to keeping plans up to date and therefore under review' and the Inspector in the previous appeal states at paragraph 12 of her decision, issued in November 2012, that 'The Council will need to re-visit its housing provision in the light of more recent household projections and to keep its housing supply in line with the evidence base in the future'. That is the approach adopted by the appellant in this case.
- ii. 7. Indeed, the SHMA explains that there would be a requirement of 690 households per annum. Households do not equate to dwellings and allowance should be made for vacancies and second homes. The 2011 census records that King's Lynn has 14.9% vacancies and second homes, which would give a full objectively assessed need (FOAN) of 793 dwellings a year. If, as a minimum, only vacancies are considered, it is generally recognised that a figure of 3% should be used giving a requirement of 711 dwellings per annum. A minimum of 51 additional dwellings a year, and possibly as many as 133, over and above the CS requirement of 660 does not suggest that the CS requirement is still

realistic. Indeed, over a 15 year period that equates to a minimum need for in excess of 750 additional dwellings.

9. Considering the appropriate buffer to be applied, Framework paragraph 47 indicates that a 5% buffer should be added 'to ensure choice and competition.' However, where there has been a record of persistent under delivery, the buffer should be increased to 20%. The Guidance confirms that there is no universal test for persistent under delivery and sets out that the assessment of local delivery is likely to be more robust if a longer term view is taken.
10. In each of the last 6 years the Council has failed to achieve its requirement of 660 dwellings per annum and has only averaged 447 dwellings a year. The Council notes that the trend from 2011 to 2014, which includes the recession between 2008 and 2013, is running at 622 dwellings per annum. Although development rates are rising, and the Council published its Pre-Submission Site Allocations and Development Management Document in October, which it is acknowledged would release the full plan provision of new sites, the long term trend is behind the target of 660 dwellings per annum with a shortfall of some 487 dwellings in the period to date. This indicates that the Council has persistently under provided and so a 20% buffer should be applied....
11. In relation to windfalls, paragraph 48 of the Framework states that an allowance can be made in the five year supply if there is compelling evidence that such sites have consistently become available in the local area, and will continue to provide a reliable source. Between 2001 and 2014, 49% of total completions in the Borough were from windfall sites, and 59% of those were from large sites of more than 10 dwellings. Given that the Council is seeking to adopt a new policy to allow infilling in the smaller villages and hamlets, small sites are likely to continue to provide a reliable source of windfalls. However, given the publication of the Pre-Submission Site Allocations and Development Management Document releasing the full plan provision of new sites, it is likely that the majority of large sites would come from allocations. Rather than there being compelling evidence, as the Framework requires, there is at best only a possibility that some completions would come from large site windfalls and these should therefore be discounted.
12. The appellant raised three queries relating to permissions. Whilst 302 dwellings are under construction at Hillingdon Square, the net result of development is the loss of 17 units. The Council accepts this and -17 is now included in the Housing Trajectory. Secondly, in respect of the Nar

Ouse Regeneration Area (NORA), the appellant considers that only 300 of the 554 with outline planning permission are likely to be completed in the 5 year period. Whilst Reserved Matters permissions were granted for a further 185 on 1 December 2014, and a preferred bidder has been approved to deliver 600 units by 2020 on Council and Homes and Community Agency land, there is little evidence to counteract the appellant's view. Finally, permission on a site north of Gaywood River, King's Lynn has lapsed and an application for 95 dwellings was subsequently refused although a revised application has just been submitted with the applicant claiming to have overcome the outstanding reason for refusal from appeal.

- i. The parties disagree on the figures but again the appellant's are more robust, despite the Council's view that the Guidance on what are deliverable sites, would give greater flexibility and add to the potential 5 year supply of sites.

13. Given the conclusions above, the appellant's calculations are preferred and show that rather than having a 7.51 year supply (based on CS and 5% buffer) as the Council maintains, there would only be a 1.91 year housing supply (based on 2011 housing projections and a 20% buffer).

Notwithstanding the Council's view that the policies in CS are consistent with the Framework, as there is no 5 year supply the housing policies, including policies defining settlement boundaries cannot be regarded as up-to-date. Housing applications should, therefore, be considered in the context of the presumption in favour of sustainable development, in accordance with the aims of the Framework."

14. Having considered all of the other matters raised in the context of the appeal, the Inspector concluded that the balance should be struck in support of the grant of planning permission subject to conditions.

15. Procedural Issues and the Grounds in Brief.

16. Before the hearing of this case commenced, I advised the parties that two of the consultants who had advised and appeared for the second defendants in this case were people with whom I had worked on numerous occasions whilst I was still at the Bar and one of whom I knew well personally. None of the parties raised any objection to this and the view appeared to be taken that given the nature of the

practice which I had at the bar and, therefore, the knowledge of people who worked within the planning profession, together with the fact that these individuals were providing independent advice and were not the parties themselves, there were no grounds upon which to express any concern in relation to me hearing the case.

17. At the hearing of the case, there was an application by Mr Leader who appeared on behalf of the claimant to amend the pleadings. No one objected to that course being taken and I granted permission. In fact, as the argument evolved during the course of the case, the claimant's claim crystallised into three grounds.

18. The first ground was that in accepting the second defendant's adjustments to the FOAN for vacancies and second homes, the Inspector had unlawfully misapplied paragraph 47 of the framework, in that this adjustment was contended to be a policy adjustment which was illegitimate when identifying the FOAN for the purpose of calculating the five-year housing land supply. It was submitted that such an allowance was not to be found in the Planning Practice Guidance which accompanies the framework as a legitimate adjustment: in fact that document only regarded vacancies as a potential source of supply.

19. The second ground was that in a number of respects, the Inspector's reasons were inadequate. This ground focused in particular on four matters. Firstly, the Inspector's reasons in relation to the FOAN and whether he had concluded it was 793 dwellings per annum or 872 dwellings per annum. Secondly, small site windfalls and the reasons provided by the Inspector as to whether they were a legitimate source of supply were said to be inadequate. Thirdly, the draft allocated sites which were emerging and why the Inspector had discounted them