

Assessment of Three Rivers' Five Year Housing Land Supply

For Richborough | 24-305

Land north of Little Green Lane, Croxley Green, Three Rivers

Project: 24-305
Site Address: Land north of Little Green Lane, Croxley Green, Three Rivers
Client: Richborough
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1. Introduction and summary

- 1.1 Emery Planning is instructed by Richborough to provide an assessment of the five year housing land supply (5YHLS) position in Three Rivers at 1st April 2023, which is the base date of the Council's latest position on its housing land supply.
- 1.2 Once the Council updates its position (e.g. to a base date of 1st April 2024), then this statement will need to be updated.
- 1.3 Emery Planning has extensive experience in dealing with housing supply matters and has prepared and presented evidence relating to five year housing land supply calculations at numerous Local Plan examinations and public inquiries across the country.

Summary

- 1.4 The Council's Housing Land Supply report states that the deliverable supply at 1st April 2023 is 1,449 dwellings, which against a local housing need of 637 dwellings plus a 20% buffer equates to 1.9 years.
- 1.5 On the requirement side, the strategic policies in the Core Strategy (adopted October 2011) are more than five years old and have not been reviewed and found to be up to date. Therefore, in accordance with paragraph 78 and footnote 39 of the Framework, the 5YHLS should be measured against the local housing need using the standard method set out in the Planning Practice Guidance (PPG). The standard method in the PPG was updated on 12th December 2024 and the local housing need for Three Rivers is now 832 dwellings per annum.
- 1.6 The latest Housing Delivery Test (HDT) result (2023) confirmed that Three Rivers achieved a result of 30%. This means that the 20% buffer applies to the 5YHLS calculation. Therefore, the supply that needs to be demonstrated is 4,992 dwellings (i.e., $832 \times 5 \text{ years} + 20\%$). Against the local housing need and a 20% buffer, the Council's supply figure equates to **1.45 years**.
- 1.7 On the supply side, the Council claims to have a deliverable supply of 1,449 dwellings. We have reviewed the supply and for the reasons set out in sections 11-12 of this statement, conclude that 271 dwellings should be removed from the Council's supply. The reason for this is because the Council has not provided clear evidence that housing completions will begin on the sites that fall within category b) of the definition of deliverable as set out on page 69 of the Framework. This means that the deliverable supply is 1,178 dwellings.



- 1.8 We conclude that the deliverable supply in Three Rivers at 1st April 2023 equates to **1.54 years** against the local housing need and a 20% buffer, as shown in the following table:

Table 1.1 – Three Rivers’ 5YHLS at 1st April 2023

	Requirement	Council	Emery Planning
A	Annual local housing need figure	832	
B	5YHLS requirement excluding buffer (A X 5 years)	4,160	
C	20% buffer	832	
D	5YHLS requirement including 20% buffer (B + C)	4,992	
E	Annual 5YHLS requirement (D / 5)	998	
	Supply		
F	Deliverable supply at 1 st April 2023	1,449	1,178
G	Supply in years (F / E)	1.45	1.18
H	Undersupply against the 5YHLS requirement including buffer (F – D)	-3,543	-3,814



2. Planning policy context

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

Development plan context

Existing development plan

- 2.2 The adopted development plan comprises the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014).

Emerging development plan

- 2.3 The Council is in the process of preparing a new Local Plan for Three Rivers. A Regulation 18 consultation took place between October – December 2023. The Council's Local Development Scheme (March 2024) sets out the timetable for the remaining stages of preparation as follows:
- Publication plan consultation – September/October 2024;
 - Submission – February/March 2025; and
 - Adoption – May/June 2026.
- 2.4 However, the Council published an update on 18 October 2024, stating that it was pausing work on the new Local Plan due to proposed national policy changes.

Other material considerations

Three Rivers Housing Land Supply Update – December 2023

- 2.5 The Council's Housing Land Supply report states that the deliverable supply at 1st April 2023 is 1,449 dwellings, which against the local housing need plus a 20% buffer equates to 1.9 years.



National Planning Policy Framework

2.6 The Framework was published in March 2012. It was revised in July 2018, February 2019, July 2021, September 2023, December 2023, and most recently on 12th December 2024.

2.7 The relevant sections of the revised Framework are:

- Footnote 8 which explains that the tilted balance to the presumption in favour of sustainable development applies where a) a local planning authority cannot demonstrate a 5YHLS or b) where the Housing Delivery Test result is less than 75%;
- Section 5: Delivering a sufficient supply of homes, including:
 - Paragraph 61, which refers to the Government’s objective of significantly boosting the supply of homes;
 - Paragraph 62, which explains that the minimum number of homes needed should be informed by a local housing need calculated using the standard method set out in the PPG. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area;
 - Paragraph 75, in relation to an allowance for windfall sites;
 - Paragraph 78, which explains that the requirement to demonstrate a 5YHLS is a *minimum* requirement and explains that the supply should be measured against either the housing requirement set out in adopted strategic policies, or the local housing need where the strategic policies are more than five years old. Footnote 39 explains that if the adopted housing requirement has been reviewed and found not to require updating, it should still be used. Footnote 39 also explains that where the local housing need is used it should be calculated using the standard method set out in the PPG. Paragraph 78 and footnote 40 also explain that a 20% buffer should apply where the latest HDT result is less than 85%. Paragraph 78 and footnotes 41 and 42 explain that from 1 July 2026, for decision-making purposes only, a 20% buffer will apply where a local authority has a housing requirement adopted in the last five years examined against a previous version of the Framework, or where the housing requirement is more than five years old; *and* whose annual adopted requirement is less than 80% of the most up-to-date local housing need figure.;
 - Paragraph 79, in relation to Housing Delivery Test Action Plans and the policy consequences for failing the HDT.

Annex 1: Implementation, including:

- Paragraph 232, which explains that where a local planning authority can demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78) and where the Housing Delivery Test indicates that the delivery of housing is more than 75% of the housing requirement over the previous three years, policies should not be regarded as out-of-date on the basis that the most up to date local housing need figure (calculated using the standard method set out in planning



practice guidance) is greater than the housing requirement set out in adopted strategic policies, for a period of five years from the date of the plan's adoption.

- Paragraph 233, which sets out the circumstances in which an authority can confirm its housing land supply through an Annual Position Statement.

Annex 2: Glossary, including:

- The definition of “deliverable” on page 72; and
- The definition of “windfall sites” on page 80.

Planning Practice Guidance (PPG)

2.8 The relevant chapters of the PPG in relation to this statement are:

Chapter 2a - Housing and economic needs assessment;

Chapter 3 – Housing and economic land availability assessments; and

Chapter 68 – Housing supply and delivery.

2.9 The PPG was last updated on 12th December 2024 to reflect the revised Framework.



3. What constitutes a deliverable site?

Previous National Planning Policy (2012) and Guidance (2014)

3.1 Footnote 11 of the 2012 Framework stated:

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

3.2 Paragraph 3-031 of the previous PPG (dated 6th March 2014): “What constitutes a ‘deliverable site’ in the context of housing policy?” stated:

“Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe.

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

3.3 Therefore, under the 2012 Framework, all sites with planning permission, regardless of their size or whether the planning permission was in outline or in full were to be considered deliverable until permission expired unless there was clear evidence that schemes would not be “implemented” within five years. The PPG went further by stating that allocated sites “could” be deliverable and even non-allocated sites without planning permission “can” be considered capable of being delivered.

3.4 The Government consulted on the draft revised Framework between March and May 2018. The draft revised Framework provided the following definition of “deliverable” in the glossary:



“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Small sites, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

3.5 Question 43 of the Government’s consultation on the draft revised Framework asked: “do you have any comments on the glossary?”

3.6 There were 750 responses to question 43 of the consultation. Some of the points raised included:

“Local authorities called for the proposed definition of ‘deliverable’ to be reconsidered, as it may result in them being unable to prove a five year land supply and place additional burdens on local authorities to produce evidence. Private sector organisations were supportive of the proposed definition.” (my emphasis)

3.7 The government’s response was as follows:

“The Government has considered whether the definition of ‘deliverable’ should be amended further, but having assessed the responses it has not made additional changes. This is because **the wording proposed in the consultation is considered to set appropriate and realistic expectations for when sites of different types are likely to come forward.**” (my emphasis)

Current National Planning Policy and Guidance

3.8 The definition of “deliverable” is set out on page 72 of the Framework (December 2024) and states:

“Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified



on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

3.9 The definition of deliverable was first amended in 2018 and has remained substantially the same since.

3.10 The relevant paragraph of PPG was most recently updated on 05 February 2024. Paragraph 68-007 of the PPG¹ provides some examples of the types of evidence, which could be provided to support the inclusion of sites with outline planning permission for major development and allocated sites without planning permission. It states:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development;
- are allocated in a development plan;
- have a grant of permission in principle; or
- are identified on a brownfield register.

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.”

¹ Paragraph 007 Reference ID: 68-007-20190722: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”



Assessment

- 3.11 Whilst the previous definition in the 2012 Framework considered that all sites with planning permission should be considered deliverable, the revised definition in the 2023 Framework is clear that only sites with detailed consent for major development should be considered deliverable and those with outline planning permission should only be considered deliverable where there is clear evidence that housing completions will begin in five years.
- 3.12 As above, the PPG has been updated to provide some examples of the type of evidence which may be provided to be able to consider that sites with outline planning permission for major development, allocated sites and sites identified on a brownfield register are deliverable.

Relevant appeal decisions

- 3.13 There have been several appeal decisions which have considered the definition of “deliverable” as set out in the current version of the Framework and whether “clear evidence” has been provided for the inclusion of sites which only have outline planning permission for major development or are allocated without planning permission. Whilst each appeal has been determined on a case by case basis on the evidence before the decision-maker, several themes have arisen in appeal decisions, which we discuss below.

The absence of any written evidence

- 3.14 Where no evidence has been provided for the inclusion of category b) sites, the Secretary of State and Inspectors have concluded that these sites should be removed. For example:
- In an appeal decision regarding land off Audlem Road, Stapeley, Nantwich and land off Peter De Stapeleigh Way, Nantwich², the Secretary of State removed 301 dwellings from Cheshire East Council’s supply from sites including: *“sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement”* (paragraph 21 of the decision letter dated 15th July 2020);
 - In an appeal decision regarding land to the south of Cox Green Road, Surrey³ an Inspector removed 563 dwellings on 24 sites from Waverley Council’s supply because the Council had not provided any evidence for their inclusion (paragraphs 22 to 24 of the appeal decision dated 16th September 2019);
 - In an appeal decision regarding land at Station Road, Stalbridge, North Dorset⁴ an Inspector removed 2 large sites from North Dorset’s supply (references A02 and A04) because the Council

² PINS refs: 2197532 and 2197529

³ PINS ref: 3227970

⁴ PINS ref: 3284485



had not provided any up to date information from the developers for these sites and applications for reserved matters had not been made (paragraphs 53 and 57); and

- In an appeal decision regarding land within the Westhampnett / North East Strategic Development Location, North of Madgwick Lane, Chichester⁵, an Inspector removed the second phase of a wider site that is under construction on the basis that an application for reserved matters had not been made for phase 2 and the fact that a major housebuilder was progressing phase 1 was not in itself clear evidence (paragraph 82).

The most up to date evidence

3.15 Paragraph 68-004 of the PPG⁶ explains that for decision-taking purposes, an authority will need to be able to demonstrate a five year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

- *“using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);*
- *‘confirming’ the 5 year land supply using a recently adopted plan or through a subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework).”*

3.16 In this case, the Council’s five year housing land supply has not been confirmed through a recently adopted plan or an annual position statement and therefore the latest available evidence should be used. As above, paragraph 68-007 of the PPG also states that *“robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions”*. It also states that the “current” planning status of a site is one example of the type of evidence that could be used to support the inclusion of category b) sites. Therefore, the latest available evidence should be used but this is only in relation to sites already in the supply.

3.17 In an appeal regarding land on the east side of Green Road, Woolpit⁷, the Inspector found Mid Suffolk Council’s approach in publishing its AMR and then retrospectively seeking evidence to justify its position “wholly inadequate”. Paragraph 70 of the appeal decision states:

“the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly

⁵ PINS ref: 3270721

⁶ Paragraph: 004 Reference ID: 68-004-20190722: *“How can an authority demonstrate a 5 year supply of deliverable housing sites?”*

⁷ PINS ref: 3194926



inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published.”

- 3.18 However, evidence can post date the base date to support the sites in the deliverable supply and not seek to introduce new sites. In an appeal regarding land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands (Milton Keynes)⁸, the Secretary of State agreed with Inspector Gilbert-Woolridge that the latest available evidence should be used when considering deliverability. Paragraph 12 of the Secretary of State’s decision letter dated 25th June 2020 states:

“For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11)”.

- 3.19 Similarly, in a decision regarding land off Darnhall School Lane, Winsford⁹, the Secretary of State agreed with Inspector Middleton that it is appropriate to take into account information received after the base date if it affects sites included in the deliverable supply¹⁰.
- 3.20 This means that where sites have not progressed as the Council’s trajectory claimed at the time the position statement was published, the supply should be reduced. In the Audlem Road appeal¹¹, the Secretary of State removed from Cheshire East Council’s supply;

“a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress”. (paragraph 21 of the Decision Letter dated 15th July 2020)

- 3.21 Cheshire East Council’s Housing Monitoring Update (HMU) had a base date of 31st March 2019 and was published in November 2019. Representations by both parties on the HMU were received with the final comments received on 12th February 2020 (DL paragraph 7). Therefore, whilst the written evidence for this site explained a planning application would be made on this site in August 2019 because the application was not forthcoming by the time the decision was made and no other evidence of progress had been provided, the Secretary of State removed the site from the supply.

The form and value of the evidence

- 3.22 In the Woburn Sands appeal decision referred to above, the Secretary of State agreed with the Inspector that a proforma can, in principle, provide clear evidence of a site’s deliverability (please see paragraph 12 of the decision letter and paragraphs 12.13 to 12.15 of the Inspector’s Report). However, the evidential

⁸ PINS ref: 3169314

⁹ PINS ref: 2212671

¹⁰ Paragraph 344 of the Inspector’s Report and paragraph 15 of the Decision Letter.

¹¹ PINS refs: 2197532 and 2197529



value of the written information is dependent on its content. The Secretary of State and Inspectors have concluded that it is simply not sufficient for Councils to provide agreement from landowners and promoters that their intention is to bring sites forward. The evidence needs to provide a realistic prospect that housing will be delivered on the site within five years.

3.23 For example, in allowing an appeal for 120 dwellings at land east of Gleneagles Way, Hatfield Peverel¹², the Secretary of State found Braintree Council could not demonstrate a five year housing land supply.

3.24 Braintree Council claimed that it could demonstrate a 5.29 year supply. In determining the appeal, the Secretary of State concluded that the Council could only demonstrate a 4.15 year supply. The reason for this is set out in paragraph 41 of the decision letter (page 7), which states:

“Having reviewed the housing trajectory published on 11 April, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission do not meet the requirement in the Framework Glossary definition of “deliverable” that there be clear evidence that housing completions will begin on site within five years. He has therefore removed ten sites from the housing trajectory”

3.25 The ten removed sites are listed in a table provided at Annex D on page 24 of the Secretary of State’s decision letter. Of the ten sites removed from Braintree’s supply, 9 had outline planning permission and the remaining site was an allocated site with a hybrid planning application pending determination. For these sites, Braintree Council had submitted completed forms and emails from landowners, developers and their agents providing the timescales for the submission of reserved matters applications and anticipated build rates. However, the Secretary of State removed these sites because he did not consider they met the definition of “deliverable” as set out in the Framework.

3.26 As part of its case in seeking to defend an appeal against its decision to refuse to grant outline planning permission for up to 140 no. dwellings at land off Popes Lane, Sturry¹³, Canterbury City Council claimed that it could demonstrate a 6.72 year supply. For there to be a shortfall in the supply, Canterbury Council claimed that some 1,654 dwellings (out of 6,455 dwellings) would have to be removed from the “deliverable” supply.

3.27 The Inspector, however, found that the Council could not demonstrate a five year housing land supply. The Inspector concluded that the deliverable supply was 4,644 dwellings, which equates to 4.8 years. The

¹² PINS ref: 3180729

¹³ PINS ref: 3216104



reason why the Inspector concluded that the deliverable supply was 1,811 dwellings (28%) less than the Council claimed was because he found that 10 sites should be removed from the supply because:

“there is insufficient clear evidence to show that they meet the NPPF’s definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.” (paragraph 23)

- 3.28 In this case, Canterbury Council had provided statements of common ground between the Council and the developer or landowner to support the inclusion of several of the disputed sites. However, the Inspector found that the statements of common ground did not demonstrate that the development prospect was realistic. Paragraph 23 of the appeal decision states:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer’s or landowner’s stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.”

- 3.29 Similarly, as part of its case in seeking to defend an appeal made by Parkes Ltd against its decision to refuse to grant outline planning permission for up to 53 dwellings at land to the south of Cox Green Road, Rudgwick¹⁴, Waverley Council claimed it could demonstrate a supply of 5,708 dwellings, which equated to just under 5.2 years against its housing requirement and buffer.
- 3.30 The Inspector concluded that the supply should be reduced by 928 dwellings and therefore that Waverley Council could only demonstrate a “deliverable” supply of 4.3 years. The reasons why the Inspector considered the supply should be reduced are set out in paragraphs 10 to 27 of the appeal decision. We note that whilst Waverley Council’s assumptions of delivery on a site at Dunsfold Park relied on estimated numbers of delivery from a pro-forma returned by the site’s lead developer, the Inspector however considered that the details contained within it were “scant”. There was no explanation as to how the timings of delivery could be achieved including the intended timescales for submitting and approving reserved matters, applications of discharge of conditions, site preparation and installing infrastructure. The Inspector therefore did not include the site.

¹⁴ PINS ref: 3227970



3.31 In an appeal decision dated 25th August 2022 regarding an appeal made by Salter Property Investments Ltd against the decision of Exeter City Council to refuse to grant outline planning permission for up to 93 dwellings at land off Spruce Close, Exeter¹⁵, the Inspector found:

- The pro-formas used by Exeter were undated, unsigned and deficient (paragraph 39);
- That 2 sites with outline planning permission and no reserved matters applications pending, and no clear evidence for their inclusion should be removed (paragraphs 40 and 41); and
- That even where reserved matters application had been made, where those applications are subject to outstanding objections and there is no written agreement with the developer, the sites should not be included because no clear evidence had been provided (paragraphs 42 and 43).

3.32 In summary, the above appeal decisions found that sites with outline planning permission for major development and allocated sites without planning permission should not be included in the deliverable supply where the respective Councils had failed to provide the clear evidence required. In some cases those Councils had provided proformas and other evidence from those promoting sites, and Inspectors and the Secretary of State found this not to be clear evidence.

¹⁵ PINS ref: 3292721



4. Housing Delivery

Housing Delivery Test

- 4.1 The 2023 HDT results were published on 12th December 2024. The result for Three Rivers is summarised in the table below:

Table 4.1 – Published 2023 Housing Delivery Test Result

	Housing requirement				Housing delivery				HDT%
	2020-21	2021-22	2022-23	Total	2020-21	2021-22	2022-23	Total	
Three Rivers	415	630	633	1,678	142	153	205	500	30%

- 4.2 As can be seen from the table above, Three Rivers delivered 500 new homes over the last three years against a HDT requirement over the same period of 1,678 dwellings. This results in a HDT measurement of 30% and means that the 20% buffer applies to the 5YHLS calculation. It also means that the presumption in favour of sustainable development applies because of the HDT result (as well as due to a shortfall in the 5YHLS) and an action plan must be prepared, as set out in paragraph 79 of the Framework.

Delivery against the adopted housing requirement

- 4.3 The base date of the Three Rivers Core Strategy is 1st April 2001. Between 1st April 2001 and 31st March 2023, 4,504 dwellings were completed in Three Rivers against a housing requirement of 3,960 dwellings. This is shown in the table below.

Table 4.2 – Completions against adopted housing requirement

Year	Annual requirement	Completions	Under / over delivery	Cumulative under / over delivery
2001/02	180	365	185	185
2002/03	180	233	53	238
2003/04	180	138	-42	196
2004/05	180	73	-107	89



Year	Annual requirement	Completions	Under / over delivery	Cumulative under / over delivery
2005/06	180	197	17	106
2006/07	180	335	155	261
2007/08	180	254	74	335
2008/09	180	331	151	486
2009/10	180	48	-132	354
2010/11	180	107	-73	281
2011/12	180	185	5	286
2012/13	180	176	-4	282
2013/14	180	142	-38	244
2014/15	180	285	105	349
2015/16	180	215	35	384
2016/17	180	144	-36	348
2017/18	180	264	84	432
2018/19	180	149	-31	401
2019/20	180	406	226	627
2020/21	180	99	-81	546
2021/22	180	154	-26	520
2022/23	180	204	24	544
Totals	3,960	4,504	544	

4.4 Therefore, at 1st April 2023, there was an 'oversupply' of 544 dwellings against the adopted housing requirement. We note that this requirement was based on the now revoked East of England Plan and is therefore out of date.



5. Assessment of the Council's housing supply

5.1 Our assessment of the Council's five year housing land supply is based on six key stages:

1. Identifying the base date and five year period;
2. Identifying the housing requirement;
3. Identifying the past shortfall or over-supply;
4. Identifying how the past over-supply should be addressed;
5. Applying the appropriate buffer; and
6. Identifying a Realistic and Deliverable Supply.

5.2 Each stage is addressed below.



6. Stage 1: Agreeing the base date and five year period

- 6.1 The base date is the start date for the five year period for which both the requirement and supply should relate.
- 6.2 The current housing land supply position statement has a base date of 1st April 2023 and a five year period to 31st March 2028. We have assessed the supply at 1st April 2023 as that remains the most up to date position.
- 6.3 The Council should not attempt to include any new sites, which are not already within its schedule of sites at the base date. This would effectively mean changing the base date to beyond 1st April 2023. Within this context, there have been several appeal decisions, which have found such an approach to be inappropriate.
- 6.4 In a decision in relation to an appeal made by Wavendon Properties Ltd against the decision of Milton Keynes Council to refuse to grant outline planning permission for a mixed use development including up to 203 dwellings at land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands¹⁶, the Secretary of State agreed with Inspector Gilbert-Wooldridge that whilst evidence which post-dated the base date was acceptable, this was only in relation to sites already in the schedule of sites. New sites should not be added after the base date¹⁷.
- 6.5 Similarly, in an appeal made by the Darnhall Estate against the decision of Cheshire West and Chester Council to refuse to grant residential development for up to 184 dwellings at land off Darnhall School Lane, Winsford¹⁸, the Secretary of State agreed with Inspector Middleton that it would be inappropriate for new sites to be included after the base date and that their insertion should await the next full review of the housing land supply position¹⁹.
- 6.6 We have therefore proceeded on the basis of the sites included in the Council's schedule at the base date.

¹⁶ PINS ref: 3169314

¹⁷ Please see DL paragraph 12 and IR paragraph 12.12

¹⁸ PINS ref: 2212671

¹⁹ Please see DL paragraph 15 and IR paragraph 344



7. Stage 2: Identifying the housing requirement

Adopted housing requirement

7.1 The Core Strategy states:

“The East of England Plan requires Three Rivers to accommodate 5,000 dwellings between 2001 and 2026, an average of 200 dwellings per year. The Council has considered available evidence both on the need for housing in the District and the capacity of the District to accommodate this need. The Council considers that it is appropriate for Three Rivers to provide 4,500 dwellings between 2001 and 2026, a target of 180 homes per year.”

7.2 As such, the adopted housing requirement is 180 dwellings per annum. This requirement is based on the now revoked East of England Plan and is therefore out of date.

The Local Housing Need for Three Rivers

7.3 Local Housing Need is defined in the Glossary on page 74 of the Framework as follows:

“The number of homes identified as being needed through the application of the standard method set out in national planning practice guidance.

7.4 Paragraph 2a-004 of the PPG explains how local housing need is calculated. It results in a local housing need figure for Three Rivers of 832 dwellings per annum.

7.5 The Local Plan is more than five years old and has not been reviewed and found to not require updating. Therefore, in accordance with paragraph 77 and footnote 42 of the Framework, the five year housing land supply should be measured against the local housing need.



8. Stages 3 and 4: Identifying the shortfall or oversupply and addressing it

- 8.1 Between 1st April 2001 and 31st March 2023, 4,504 dwellings were completed in Three Rivers against a housing requirement of 3,960 dwellings. Therefore, at 1st April 2023, there was an 'oversupply' of 544 dwellings against the adopted housing requirement.
- 8.2 However, as in this case the five year housing land supply is to be measured against the local housing need, there is no requirement to specifically address under-delivery separately as this has been factored in as part of the affordability ratio under step 2 as highlighted in this part of the PPG.



9. Stage 5: Applying the appropriate buffer

9.1 Paragraph 77 of the Framework states:

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years’ worth of housing, or a minimum of four years’ worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old. Where there has been significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period).”

9.2 Footnote 43 explains that “significant under delivery” of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.”

9.3 As set out in Section 4 of this statement, the HDT was failed in Three Rivers and therefore, the 20% buffer applies.

Table 9.1 – Summary of five year requirement

	Requirement	
A	Annual local housing need figure	832
B	5YHLS requirement excluding buffer (A X 5 years)	4,160
C	20% buffer	832
D	5YHLS requirement including 20% buffer (B + C)	4,992
E	Annual 5YHLS requirement (D / 5)	998



10. Stage 6: Identifying a Realistic and Deliverable Supply

10.1 On the supply side, the Council claims to have a deliverable supply of 1,449 dwellings.

10.2 In section 3 above, we have set out the definition of deliverable as set out in the current Framework and how this compares to the previous definition of deliverable as set out in the 2012 Framework and associated guidance. We also referred to several appeal decisions where the Secretary of State and Inspectors have considered the definition of deliverable and the clear evidence required to include sites within category b) of the definition of deliverable.

10.3 This is relevant because despite the onus being firmly on the Council, it has not provided the clear evidence to support the inclusion of sites in its trajectory. As we have set out in section 3 above, the Secretary of State and Inspectors have:

- removed category b) sites from the deliverable supply where no evidence of deliverability has been provided; and
- concluded that the evidential value of the written information is dependent on its content. Category b) sites have been removed from the deliverable supply where written evidence is “scant” in detail. A realistic assessment of all factors concerning delivery should be considered.

10.4 We now set out our assessment of the Council’s deliverable five year supply.



11. Assessment of sites

11.1 The Council includes 154 dwellings on 5 sites which we dispute as follows:

Table 11.1 – Disputed sites

Site ref	Address	Capacity	LPA 5YS	EP 5YS	EP deduction
H(22)	Depot, Stockers Farm Road, Rickmansworth	60	60	0	-60
21/1872/ PDR	Regus Building, Park Road, Rickmansworth	39	39	0	-39
H(24)	The Fairway, Green Lane, Oxhey Hall	25	25	0	-25
H(32)	Rear of Lytham Avenue, South Oxhey	20	20	0	-20
H(3)	Pin Wei, 35 High Street, Abbots Langley	10	10	6	-4
		Total	154	6	-148

11.2 Our assessment of these sites is set out below.



H(22) – Depot, Stockers Farm Road, Rickmansworth

Capacity = 60 dwellings, Council's 5YHLS = 60 dwellings

- 11.3 At the base date, the site did not have planning permission, nor had an application been made.

Current planning status?

- 11.4 The site is allocated in the Site Allocations Local Development Document (SALDD) for up to 60 dwellings. The SALDD states that the site will be delivered between 2016 – 2020. However, the site does not have planning permission, and no planning application has been made to date.

Firm progress being made towards the submission of an application?

- 11.5 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a planning application.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

- 11.6 No written agreement between the Council and the developer has been provided. It is unknown whether there is a developer on board at this stage.

Firm progress with site assessment work?

- 11.7 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

- 11.8 No relevant information has been provided regarding viability, ownership constraints or infrastructure provision.

Summary

- 11.9 The site does not have planning permission, nor has a planning application been submitted to date. There is no evidence to suggest that progress is being made towards the submission of a planning application.
- 11.10 The Council has not provided “clear evidence that housing completions will begin on the site within five years”. The site fails to meet the definition of “deliverable” as set out on page 69 of the Framework and should be removed from the supply. This results in a reduction of **60 dwellings** from the Council's supply.



21/1872/PDR – Regus Building, Park Road, Rickmansworth

Capacity = 39 dwellings, Council's 5YHLS = 39 dwellings

11.11 At the base date, the site had prior approval for the change of use from offices to 39 dwellings.

Current planning status?

11.12 A prior notification application for the change of use from offices to 39 dwellings was approved on 30 November 2022 (ref: 21/1872/PDR).

11.13 However, the site is still in active use as coworking and serviced offices for rent²⁰ as of October 2024.

11.14 The prior approval includes a pre-commencement condition which states that development shall not be commenced until the Council has been provided with a registered conveyance certificate which confirms that all parties with a legal interest in the Land are bound by the Section 106 agreement. This condition has not been discharged to date, nor has an application to discharge the condition been made.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.15 No written agreement between the Council and the developer has been provided.

Firm progress with site assessment work?

11.16 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.17 No relevant information has been provided regarding viability, ownership constraints or infrastructure provision.

Summary

11.18 Whilst the site has prior approval for the change of use from offices to 39 dwellings, the site is still in active office use to date and is advertised on multiple letting agency websites as coworking and serviced offices for rent. In addition, the prior approval is subject to a pre-commencement condition which has not been discharged to date.

²⁰ <https://www.regus.com/en-gb/united-kingdom/rickmansworth>



11.19 The Council has not provided “clear evidence that housing completions will begin on the site within five years”. The site fails to meet the definition of “deliverable” as set out on page 69 of the Framework and should be removed from the supply. This results in a reduction of **39 dwellings** from the Council’s supply.



H(24) – The Fairway, Green Lane, Oxhey Hall

Capacity = 25 dwellings, Council's 5YHLS = 25 dwellings

11.20 At the base date, the site had outline planning permission for 25 dwellings.

Current planning status?

11.21 An outline planning application for the demolition of the former Fairway Care Home and the erection of 25 dwellings was submitted on 15 July 2022 and approved on 30 June 2023 (ref: 22/1342/OUT).

11.22 No applications for reserved matters have been submitted to date.

Firm progress being made towards the submission of an application?

11.23 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a reserved matters application.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.24 No written agreement between the Council and the developer has been provided.

Firm progress with site assessment work?

11.25 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.26 No relevant information has been provided regarding viability, ownership constraints or infrastructure provision.

Summary

11.27 The site only has outline planning permission. No reserved matters applications have been made, nor is there any evidence to suggest that progress is being made towards the submission of a reserved matters application.

11.28 The Council has not provided "clear evidence that housing completions will begin on the site within five years". The site fails to meet the definition of "deliverable" as set out on page 69 of the Framework and should be removed from the supply. This results in a reduction of **25 dwellings** from the Council's supply.



H(32) – Rear of Lytham Avenue, South Oxhey

Capacity = 20 dwellings, Council's 5YHLS = 20 dwellings

11.29 At the base date, the site did not have planning permission, nor had an application been made.

Current planning status?

11.30 The site is allocated in the Site Allocations Local Development Document (SALDD) for up to 20 dwellings. The SALDD states that the site will be delivered between 2021 – 2026. However, the site does not have planning permission, and no planning application for residential development has been made to date.

11.31 A Hertfordshire County Council Regulation 3 application for a day service facility for adults with physical and learning disabilities was submitted on 31 August 2023 (ref: 23/1491/HCR3). Three Rivers Council objected to the scheme on 05 October 2023, stating that the development would result in the loss of an allocated housing site. However, the application was approved at planning committee on 18 July 2024.

11.32 No further planning applications have been made on the site.

Firm progress being made towards the submission of an application?

11.33 There is no clear evidence to demonstrate that firm progress is being made towards the submission of a planning application for residential development.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.34 No written agreement between the Council and the developer has been provided. It is unknown whether there is a developer on board at this stage.

Firm progress with site assessment work?

11.35 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.36 No relevant information has been provided regarding viability, ownership constraints or infrastructure provision.

Summary

11.37 The site does not have planning permission, nor has a planning application been submitted to date. There is no evidence to suggest that progress is being made towards the submission of a planning application for



residential development. The site now has planning permission for the development of an adult day service centre.

11.38 The Council has not provided “clear evidence that housing completions will begin on the site within five years”. The site fails to meet the definition of “deliverable” as set out on page 69 of the Framework and should be removed from the supply. This results in a reduction of **20 dwellings** from the Council’s supply.



H(3) – Pin Wei, 35 High Street, Abbots Langley

Capacity = 10 dwellings, Council's 5YHLS = 10 dwellings

11.39 At the base date, the site did not have planning permission.

Current planning status?

11.40 A full planning application for the demolition of the existing building and the erection of 6 dwellings was submitted on 24 October 2023 and approved on 13 September 2024 (ref: 23/1795/FUL). No further applications have been made.

Firm progress being made towards the submission of an application?

11.41 There is no clear evidence to demonstrate that firm progress is being made towards the submission of any further planning applications.

Written agreement between the LPA and the developer confirming their anticipated start and build-out rates?

11.42 No written agreement between the Council and the developer has been provided.

Firm progress with site assessment work?

11.43 No evidence has been provided.

Clear relevant information about viability, ownership constraints or infrastructure provision?

11.44 No relevant information has been provided regarding viability, ownership constraints or infrastructure provision.

Summary

11.45 The site has full planning permission for 6 dwellings. However, no further applications have been made, nor is there any evidence to suggest that progress is being made towards the submission of a further application. As such, **4 dwellings** should be removed from the Council's supply.



12. Windfall allowance

Is there “compelling evidence” to justify the inclusion of a windfall allowance?

- 12.1 The Council includes a windfall allowance of 195 dwellings in the five year supply (i.e., 39 dwellings per annum). The windfall allowance assumes that currently unknown sites will become available, secure planning permission and deliver housing in the five year period. This is in addition to the windfall sites which are already known at the base date.

National Planning Policy and Guidance

- 12.2 Paragraph 75 of the Framework states:

“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

- 12.3 The definition of “windfall sites” is provided on page 80 of the Framework as follows:

“Sites not specifically identified in the development plan”.

- 12.4 Paragraph 3-023 of the PPG²¹ states:

“A windfall allowance may be justified in the anticipated supply if a local planning authority has compelling evidence as set out in paragraph 70 of the National Planning Policy Framework.”

Compelling evidence

- 12.5 The Council’s Housing Land Supply report states that previous windfall delivery in Three Rivers has been an average of 39 dwellings per annum. As such, 195 dwellings can be expected to come forward on windfall sites in the five year period (i.e., 39 x 5 years).
- 12.6 However, the Council already includes 123 dwellings on known windfall sites in the five year supply. This results in a total windfall allowance (including known windfall sites with planning permission) of 318

²¹ Reference ID: 3-023-20190722: “How should a windfall allowance be determined in relation to housing?”



dwellings. This would exceed past trends. Therefore, based on past trends, only an additional 72 dwellings can be expected to come forward on windfall sites (i.e., $195 - 123 = 72$). This results in a reduction of **123 dwellings** from the Council's supply.



13. Summary of deductions

13.1 In summary, we consider that 271 dwellings should be deducted from the Council's supply, as summarised in the table below.

Table 13.1 – Summary of deductions

Source of supply	Deduction
Disputed sites	148
Windfall allowance	123
Total	271

13.2 We therefore conclude that the deliverable supply at 1st April 2023 is 1,178 dwellings (i.e., 1,449 – 271).



14. Conclusions

14.1 In summary, we conclude that the deliverable supply in Three Rivers at 1st April 2023 is 1,178 dwellings. This equates to **1.18 years** against the local housing need and a 20% buffer, as shown in the following table:

Table 14.1 – Three Rivers’ 5YHLS at 1st April 2023

	Requirement	Council	Emery Planning
A	Annual local housing need figure	832	
B	5YHLS requirement excluding buffer (A X 5 years)	4,160	
C	20% buffer	832	
D	5YHLS requirement including 20% buffer (B + C)	4,992	
E	Annual 5YHLS requirement (D / 5)	998	
	Supply		
F	Deliverable supply at 1 st April 2023	1,449	1,178
G	Supply in years (F / E)	1.45	1.18
H	Undersupply against the 5YHLS requirement including buffer (F – D)	-3,543	-3,814



