

**PROOF OF EVIDENCE  
OF  
PAUL FALCONER  
PgDip MRTPI**

Appeal By: Claygate House Investments Ltd & MJS Investments Ltd  
Site: Land North of Raleigh Drive, Claygate, Esher, Surrey, KT10 9DF  
LPA Reference: 2023/0962  
Planning Inspectorate Reference: APP/K3605/W/23/3334391

March 2024

## **CONTENTS**

- 1. Introduction, document scope and background**
- 2. Planning policy context**
- 3. The LPA position on Deliverable Housing Land Supply**
- 4. Conclusions in relation to Housing Land Supply**
- 5. Affordable housing supply**

## **APPENDICES**

- Appendix 1.1 St Georges, House, 24 Queens Road, Weybridge (2017/2534) – Site Layout  
Appendix 1.2 2017/2534 Decision Notice
- Appendix 2.1 162 Portsmouth Road, Thames Ditton (2016/1066) – Site Layout  
Appendix 2.2 2016/1066 Decision Notice
- Appendix 3.1 Rear ground floor office suite, 1 Wolsey Road, East Molesey (2016/3864) - Site Layout  
Appendix 3.2 2016/3864 – Decision Notice
- Appendix 4.1 US463 - Sundial House, The Molesey Venture, Orchard Lane, East Molesey (2022/3525) – Site Layout  
Appendix 4.2 2022/3525 – Application Form  
Appendix 4.3 2022/3525 – Environment Agency consultation responses
- Appendix 5.1 Brooklands College (2023/1359) – Site Layout  
Appendix 5.2 2023/1359 – Committee Resolution 5 December 2023  
Appendix 5.3 Cala Phasing Plan – Brooklands College, Heath Road, Weybridge (2023/1359)  
Appendix 5.4 2023/1359 - Application Form  
Appendix 5.5 Brooklands College/Cala Homes Public Consultation Event 12 July 2022
- Appendix 6.1 Members Hill (2020/3345, 2021/2626, 2022/2746, 2023/3294)– Site Layouts  
Appendix 6.2 2020/3345, 2021/2626, 2022,2746 – Decision Notices  
Appendix 6.3 2023/3294 – Application Form
- Appendix 7.1 Copsem Manor, 50 Copsem Lane, Esher (2021/2254, 2023/0324) – Site Layout  
Appendix 7.2 2021/2254, 2023/0324 Decision Notice

- Appendix 8.1 AC Court (2023/3355, 2023/1791)– Site Layouts  
Appendix 8.2 2023/3355, 2023/1791 Decision Notices
- Appendix 9.1 Ikona Court (2023/1382) – Site Layout  
Appendix 9.2 2023/1382 Decision Notice
- Appendix 10.1 142 High St, Esher (2023/0491) – Site Layout  
Appendix 10.2 2023/0491 Decision Notice
- Appendix 11.1 103 Ashley Rd (2023/2091)– Site Layout  
Appendix 11.2 2023/2091 Decision Notice
- Appendix 12.1 63 Bridge Rd (2023/2311)– Site Layout  
Appendix 12.2 2023/2311 Decision Notice
- Appendix 13 St George’s Business Park (2023/2167, 2169 and 2170) Site Layout
- Appendix 14 Permissions granted since 1<sup>st</sup> April 2023 for 1-4 units
- Appendix 15 Response to Housing Data FOI

## **Introduction**

- 1.1 I am Paul Falconer. I am employed by Elmbridge Borough Council (“the LPA”) as Development Manager. I have a post-graduate diploma in Town Planning and am a Chartered Member of the Royal Town Planning Institute. I have been employed as a planner in Local Government since 1996 and have worked in both Planning Policy and Development Management. I have worked at Elmbridge Borough Council since 2014, having previously worked at Waverley Borough Council and the London Borough of Sutton.
- 1.2 I am familiar with the appeal site and the surrounding area.
- 1.3 The evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

## **Scope of Evidence**

- 1.4 This Proof of Evidence addresses the Council’s housing land supply and affordable housing position.

## **Background and Summary of Differences between the Parties**

- 1.5 My Proof of Evidence is structured around the sites which are deliverable under the definition in the National Planning Policy Framework (NPPF) and those without planning permission.
- 1.6 Paras 5.2 to 6.6 of the Housing Land Supply Statement of Common Ground set out the relative positions in respect of housing land supply against the agreed four year requirement figure of 2,600 dwellings.
- 1.7 In summary, the Appellant considers the Council has a supply of 3.51 years (2279 or -321 dwellings) and the Council considers it has a supply of 4.14 years (2693 or +93 dwellings).
- 1.8 The total difference between both parties is therefore less than one year’s supply.
- 1.9 In respect of the LAA sites, the difference between the parties for the sites contained in the LAA is in respect of 18 dwellings (LPA supply of 2,297 dwellings and the Appellant’s supply of 2,279 dwellings). The difference relates to just one site in Table D (Sundial House).
- 1.10 The Council also considers that 7 Sites included in Table E should be considered deliverable as at the base date of 1 April 2023, even though planning permission was granted, or a resolution to grant, after 1 April 2023 and they were not identified in the LAA. These Sites amount to 396 units. The bulk of the dwelling numbers are located at two sites (1) Members Hill Brooklands Road (119 units) and (2) Brooklands College (235 units), totalling 354 units. The remainder consists of 5 sites of between 5 and 18 units.

- 1.11 In totality, therefore, the dispute between the parties on this issue concerns a total of 8 sites (1 in the LAA and 7 outside the LAA) and whether these Sites should be considered deliverable as at the base date of 1 April 2023, the start of the 5 year period. Both parties have relied upon events post-dating 1 April 2023 in assessing deliverability of those Sites.
- 1.12 The Council will be submitting housing land supply evidence to the Local Plan Examination, where it will be considered throughout that separate statutory process. The Council has been asked to submit the evidence in response to matters, issues and questions raised by the Inspector for Stage 2 of the Examination on housing land supply (CDE.54) and this will be published by 25 March 2024. The Council will ask the Inspector to accept that evidence in due course once published. The deadline for evidence in relation to Matter 9 - Site Allocations has been extended to 20 May 2024.
- 1.13 My evidence also considers certain steps that the Council is taking to increase its housing land supply, consistent with the principle in *Hallam Land Management v SSCLG* [2018] EWCA Civ 1808; [2019] J.P.L. 63, [51] that if any shortfall were to be identified it is material to consider: “*the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.*”
- 1.14 In terms of how long any shortfall might persist and the step being taken to address it, it is relevant to consider both a number of recent planning permissions (irrespective of whether these are included in the HLS calculation) and the broader emerging Local Plan context.
- 1.15 In terms of how much the development would meet, it is accepted that the proposal is capable of being commenced and completed by the end of the 5 year period: 31 March 2028. It would therefore meet 60 dwellings of the supply, or 9% of one year’s supply or 1.8% of the total supply, effectively one month of the total 5 year period.

## **Planning Policy Context**

### Development Plan

- 2.1 The existing development plan comprises the Core Strategy (adopted 2011) (CDE.1) and Development Management Plan (adopted 2015) (CDE.2). Policy CS2 of the Core Strategy seeks to plan for 3,375 net additional dwellings (225 net dwellings annual average) within the Borough between 2011 and 2026.

### Emerging Development Plan

- 2.2 The LPA has now submitted a new Local Plan for the Borough for examination. The Draft Local Plan (CDE.16) was submitted on 10<sup>th</sup> August 2023. The Examination in Public for the Draft Elmbridge Local Plan opened on 27<sup>th</sup> February 2024 and the second stage of public hearing sessions will commence on 25<sup>th</sup> April 2024. For the purposes of this appeal and in

accordance with Paragraph 48 of the NPPF limited weight can be given to the Draft Local Plan. The draft Local Plan Policy SS3 proposes 6,785 net dwellings (424 net dwellings annual average within the Borough between 2021 and 2037. It proposed 320 units within Claygate settlement and no Green Belt releases.

- 2.3 The conformity of the appeal proposals with the policies in the development plan, whether the most important policies for determining the appeal are up to date and the weight to be given to those policies are addressed by Mr Trendall.

NPPF Paragraph 11, Footnote 8, Paragraphs 77 and 226

- 2.4 The revised NPPF published on 19 December 2023 (CDJ.3) states in footnote 8 that:

“This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test (HDT) indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.

- 2.5 The revised NPPF sets out at paragraph 77 the requirement for Local Planning Authorities to identify annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing against their housing requirements if the provisions in paragraph 226 apply. The provisions in paragraph 226 do apply to Elmbridge Borough Council because the Council have an emerging Local Plan at an advanced stage of plan making. On 5<sup>th</sup> February 2024, planning practice guidance was updated to provide the methodology for identifying a 4 Year Housing Land Supply (4YHLS) figure (CDJ.2).

Deliverable

- 2.6 The definition of deliverable is set out in the Annex to the Framework, which 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.”

2.7 The words “in particular” shows that categories a) and b) do not set out the only types of site covered by the definition. Therefore it does not contain a closed list. This has been accepted by the Secretary of State case in submitting to judgment following a legal challenge (*East Northamptonshire Council v Secretary of State for Housing, Communities and Local Government* case number CO/917/2020 – Consent Order sealed 12 May 2020) (CDG.15).

2.8 Whilst this Consent Order does not have the same status as a judgment made by the courts but it nevertheless provides clarity. The Order says:

*“The proper interpretation of the definition is that any site which can be shown to 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’ will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.”*

2.9 Paragraph 68-007 of the PPG 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.*

2.10 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.*

2.11 The Court of Appeal has further confirmed through *St. Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [38] (CDG.7) and *R. (on the application of East Bergholt Parish Council) v Babergh District Council et al* [2019] EWCA Civ 2200, [46]-[53] that the assessment of a “realistic prospect” of delivery and the requisite evidence to support this is a matter of planning judgment.

2.12 In *APP/Y0435/W/17/3169314 Land To The East Of Newport Road And To The East And West Of Cranfield Road, Woburn Sands, Buckinghamshire MK17 8UH* (25 June 2020) (CDH.42), the Secretary of State held at DL12 “The Secretary of State has considered the Inspector’s analysis at IR12.4-12.64. 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).”

2.13 The Inspector had held at 12.11:

*The base date and timescale of the evidence*

*12.8. The Council uses a base date of 1 April 2019 for the purposes of calculating its 5 year HLS position. It published its assessment in June 2019 with the housing trajectory in Appendix 1 containing notes on deliverability. Proformas were sent out by email on 20 May 2019 asking for a reply by 7 June 2019. Where no response was received, this was followed up. It was accepted by the Council that the amount of evidence predating 1 April 2019 that informed the assessment was limited. [7.26]*

*12.9. However, there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5 year HLS has to be available at the base date itself. Instead, the PPG advocates the use of the latest available evidence. A local planning authority can prepare and consult on an APS after the 1 April base date before submission to the Planning Inspectorate by 31 July. While not directly applicable here, this indicates that evidence can be produced and tested after the base date. The HLS position statements in Babergh and Mid Suffolk for the 2019-2024 period were*



*published in September 2019 and included data to justify supply that was only known about after 1 April. [7.25, 8.16, 8.17, 8.19, 8.20]*

*12.10. The Council has avoided adding new sites after the base date to prevent the skewing of supply in line with the Woolpit decision. While the Woolpit Inspector criticised the retrospective justification of sites after the publication of the Annual Monitoring Report, the Inspector at Darnall School Lane permitted additional evidence to support sites identified as deliverable at the base date which was a position accepted by the SoS in that case. The Longdene and Colchester Road Inspectors took a similar approach. In terms of Milton Keynes appeals, the Castlethorpe Road and the Globe Inspectors took into account the proformas used by the Council to inform its June assessment of 5 year HLS. [7.23, 7.24, 8.18, 8.21]*

*12.11. Therefore, I consider it 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.*

- 2.14 The Council has considered in each case the deliverability of each site as at the base date, in line with the above principle that information relied upon can post-date the base date.

#### Housing Requirement and Buffer

- 2.15 As the Core Strategy and Development Management Plan is over five years, it is agreed by both parties that the standard method should be used to calculate the housing requirement for the purposes of five year housing land supply. This equates to 650 dwellings per annum. As such there is no requirement to add any additional dwellings to the housing requirement to take into account of the shortfall in housing delivery from earlier in the plan period.
- 2.16 It is also agreed that the Council does not need to include a buffer as the Housing Delivery Test results 2022 published on 19<sup>th</sup> December 2023<sup>1</sup> identified that the Council only needs to prepare an Action Plan. This is applicable for two years from the date of publication of the NPPF. The PPG revisions published on 5 February 2024 confirms the need to use a 5-year supply requirement/target for the formula (Paragraph: 055 Reference ID: 68-055-20240205).

#### Housing Delivery Test

- 2.17 The Council published a Housing Delivery Test Action Plan in 2020 (CDE.15). In response to the 2022 Housing Delivery Test result, a Housing Delivery Test Action Plan is currently being drafted and is expected to be published in summer 2024.

---

<sup>1</sup> <https://www.gov.uk/government/publications/housing-delivery-test-2022-measurement>

2.18 The actions from the current Action Plan are:

- Continue to engage with developers, agents and site promoters to monitor build out rates, obtain information on barriers to delivering new homes and market conditions.
- Continue to collaborate with registered providers and housing companies to deliver affordable homes.
- The Housing, Homelessness & Rough Sleeping Strategy seeks to support the delivery of at least 300 affordable homes between April 2020 and March 2024 (261 affordable homes delivered from April 2020 to March 2023)
- Revision of the pre-application advice service implemented in 2020 to help speed up the delivery of new homes. Many LPAs stopped their pre-application service during Covid, but Elmbridge continued to provide this discretionary service.
- Use of Planning Performance Agreements for major development schemes at pre-application, planning application and condition stages.
- New Local Plan with up-to-date housing target is a corporate priority to boost housing delivery and respond positively to the borough's identified housing needs. The Examination in Public on the Local Plan started on 27<sup>th</sup> February 2024 and continues on 25<sup>th</sup> April 2024.
- The new Local Plan does not include the Special Low Density designations from the current Local Plan. Draft Policy HOU2: Optimisation of Sites states that development must make efficient use of land and optimise sites within the urban area.
- The Council will continue to closely monitor housing delivery and sites to provide an accurate picture of land availability within the borough
- Additional staff resources (two Planning Officers, two Business Support Officers for validation and a new Compliance and Trees Team Leader post) to help improve performance statistics for determining within the statutory deadline.
- Reviewing publicly owned sites and work with external organisations who own land to identify potential opportunities for housing development.

### *The Emerging Local Plan and Deliverability*

2.19 The Council is progressing the Local Plan and Part 2 of the Examination in Public starts on 25<sup>th</sup> April 2024. Subject to the Local Plan being adopted, this will give more certainty to sites coming forward.

2.20 Further documentation will be presented as part of the Local Plan Examination. Sessions in respect of housing land supply will be held on 29 and 30 April 2024, considering Matter 5: Housing delivery and meeting housing needs (inc windfall, policy HOU1, five year supply and approach to the Green Belt). Any relevant documents submitted as part of the examination may become material to this appeal. By 25 March 2024, the evidence in response to matters, issues and questions raised by the Inspector for Stage 2 of the Examination on housing land supply (CDE.54) will be

published and the Council would ask the Inspector to accept that evidence in due course. The deadline for evidence in relation to Matter 9 - Site Allocations has been extended to 20 May 2024.

### 3. The LPA position on deliverable Housing Land Supply

- 3.1 The Council's latest published Annual Monitoring Report (December 2023) (CDE.13) refers to 3.81 years supply of housing land available between 31 March 2023-1 April 2027. This was based on the NPPF prior to the changes in December 2023 and used a base date of 31<sup>st</sup> March 2023. This is the most recently published version of the Council's Housing Land Supply Position.
- 3.2 When preparing the Annual Monitoring Report, the Council considered which sites should be included in the five year supply. A review of all the sites in the Land Availability Assessment (CDE.14) and Annual Monitoring Report was undertaken and those sites which did not meet the criteria in paragraph 007 Reference ID: 68-007-20190722 of the NPPG were removed from the supply.
- 3.3 Since the Annual Monitoring Report 2023 and Land Availability Assessment Statement 2023, the Council updated the housing land supply calculation to take into account the 4 year requirement under paragraph 226 of the NPPF, as amended in December 2023. The updated position statement was shared with the Appellant as shown in Table 1 below. This showed a 4 Year Housing Land Supply of 4.32 years.

Table 1: 4 Year Housing Land Supply Position (Email to Appellant - 22 February 2024)

Column ID	Housing Requirement 1 April 2023- 1 April 2028	Results
A	LHN	650
B	Total LHN - 1 April 2023- 1 April 2028 A*5 years	3250
C	<b>Total housing requirement</b>	<b>3250</b>
D	Annual requirement C/5	<b>650</b>
	<b>Housing supply</b>	
E	Commencements	966
F	Planning permissions with 10% discount*	<b>1231</b>
G	LAA 1-5	524
	Windfalls in year 5	87
H	<b>Expected supply for 2022-2027 (E+F+G)</b>	<b>2808</b>
I	<b>Expected supply surplus/deficit (H-C)</b>	<b>-442</b>
J	<b>Supply in years H/D</b>	<b>4.32</b>

- 3.4 In preparing the Statement of Common Ground on Housing Land Supply with the Appellant, it was agreed that a number of figures for the sites identified in the Land Availability Assessment were incorrect either due (a) to double counting and (b) changes in the deliverability position since the base date of 31<sup>st</sup> March 2023.

3.5 In terms of establishing the supply of housing sites for the next four years, the Council considered several sources of supply namely:

- Sites under construction at 31 March 2023
- Outstanding planning permissions on small and large sites which were outstanding at 31 March 2023;
- Sites with a resolution to permit planning permission at 31 March 2023;
- Sites with a resolution to permit planning permission since 31 March 2023
- Sites put forward through pre-application enquiries
- Sites identified by landowners as being deliverable in the next five years
- A windfall allowance

3.6 The extent of the deliverable 4YHLS is not agreed. The Council considers that its deliverable 4YHLS at 31<sup>st</sup> March 2023 equates to 2,297 dwellings comprising of:

Table 2: 4 Year Housing Land Supply LPA Position

	<b>Council</b>	<b>Appellant</b>
<b>Need</b>		
Local Housing Need for 2023 (dpa)	650	650
Requirement for 5 years (Apr 2023 – Mar 20238)	3,250	3,250
4 year requirement	2,600	
<b>Supply</b>		
Under construction (Appendix 1 of LAA)	845	845
Planning permissions with 10% discount* (Appendix 2 of LAA)	1,137	1,137
LAA 1-5 (Appendix 3 of LAA)	228	210
Windfalls in year 4	87	87
Deliverable Supply at 1 April 2023	2,297	2,279
Units granted planning permission since 1 April 2023 not included in LAA	396	0
Years supply	4.14 yrs	3.51 yrs
Difference compared to 5 years requirement	-557	-971
Difference compared to 4 years requirement	+93	-321

3.7 In preparing the Statement of Common Ground, I agreed that 451 dwellings (from the Land Availability Assessment 2023) are not deliverable for the reasons discussed below and in the following section of my Proof of Evidence.

3.8 The SoCG contains four main tables:

**Table B: Sites under construction at 31<sup>st</sup> March 2023 (LAA Appendix 1)**

**Table C: Sites with planning permission but not under construction at 31<sup>st</sup> March 2023 (LAA Appendix 2)**

**Table D: LAA sites for delivery in years 1-5 (LAA Appendix 3)**

**Table E: Additional Sites not included in LAA but considered deliverable as at 1<sup>st</sup> April 2023**

3.9 I shall address each in turn below, identifying the figures deducted and the precise sites in issue. Table B and D involve focussed disputes in respect of 116 units across 3 and 1 sites respectively. Table C is agreed. Table E is also disputed, involving 396 units across 10 sites, but with a focus on 2 sites forming 354 of those units.

**SoCG Table B: Sites under construction at 31<sup>st</sup> March 2023 (LAA Appendix 1)**

3.10 The Council has assessed the 11 sites which were under construction at 1<sup>st</sup> April 2023 and are disputed by the Appellants. It is agreed that it is necessary to make a deduction for 77 dwellings across 8 sites in the Council's 4YHLS which includes further deductions to those shown in Table B in the SOCG. Therefore the Council submits that the total sites under construction is 845. The Council also agree to the removal of the following sites.

- The Quintet, Churchfield Road, Walton on Thames
- 290 Walton Road, West Molesey
- 77 Queens Road, Weybridge

3.11 The Appellant argue that 3 sites should not be counted as under construction because Google Streetview and Council Tax Register shows that the dwellings were occupied. The Council's position is that these units were not recorded as complete because monitoring relies on Building Control confirming that the development is complete through the issue of a completion certificate. If the developments were completed earlier, this would have added to the completions figures on previous years as the Council would not have recorded the completions previously. The sites in question are:

Site 1 - St Georges, House, 24 Queens Road, Weybridge KT13 9UX (2017/2534) – 43 dwellings (extra care apartments C2 – self contained)

3.12 Building Control records show that this site was still not registered as completed as of 14<sup>th</sup> March 2024. Google Street view images show the site under construction in January 2021 but appears to be completed and

occupied in April 2022 and March 2023. The April 2022 image indicates a show suite is open. Council Tax records indicate that the building has been banded since November 2021 although not all units have been occupied. Therefore, it is agreed that this has already been substantially completed and an Addendum to the Statement of Common Ground is proposed.

Site 2 - 162 Portsmouth Road, Thames Ditton, KT8 0XR (2016/1066) – 16 dwellings

- 3.13 Building Control records show that this site was not registered as completed as of 14<sup>th</sup> March 2024. The appellant argues that the site was added to the Council Tax Register in January 2022 listed under Martini Apartments, 1 Thorkhill Road, Thames Ditton KT7 0US. The latest Google Street view images are dated October 2022 which show barriers at the front and rear of the building, indicating that it was not completed at that time. There are no images of the building from the base date onwards to demonstrate it was substantially complete at that time. Therefore, it is agreed that this has already been substantially completed and an Addendum to the Statement of Common Ground is proposed.

Site 3 - Rear ground floor office suite, 1 Wolsey Road, East Molesey KT8 9EL (2016/3864) – 1 dwelling

- 3.14 Building Control records show that this site was not registered as completed as of 14<sup>th</sup> March 2024. It is correct that the prior approval required completion on or before 30<sup>th</sup> May 2019. Therefore it is agreed that this is not deliverable and an Addendum to the Statement of Common Ground is proposed.

**SoCG Table C: Sites with planning permission but not under construction at 31<sup>st</sup> March 2023 (LAA Appendix 2)**

- 3.15 The Council has assessed the 7 sites which were under construction at 31<sup>st</sup> March 2023 which are disputed by the Appellant. The Council agrees that these should be deducted for the reasons identified. This results in the deduction of 105 dwellings in the Council's 4YHLS as shown in Table C in the SOCG.

**SoCG Table D: LAA sites for delivery in years 1-5 (LAA Appendix 3)**

- 3.16 The Council has assessed the sites which were identified in the LAA for delivery in years 1 to 5 at 31<sup>st</sup> March 2023 which are disputed by the appellants. The LPA agrees with a number of the comments made by the Appellants on deliverability, but not all. This results in the deduction of 296 dwellings in the Council's 4YHLS as shown in Table D in the SOCG across 46 sites identified in the LAA for delivery in Years 1 to 5. The LPA argues that 230 dwellings are deliverable from the LAA sites in years 1-5.

- 3.17 The Council's overall approach to obtaining information about sites has been to contact landowners and developers directly for information about annual completion rates for their sites and plans to deliver sites in the next five years. This includes sites put forward for allocation in the Local Plan. When analysing the evidence received from developers, Planning Policy Officers considered whether there were any site constraints that would impact upon delivery rates.

Site 4 - US463 - Sundial House, The Molesey Venture, Orchard Lane, East Molesey, KT8 0BN (61)

- 3.18 Application 2022/3525 was submitted on 18<sup>th</sup> November 2022 and therefore was live at the base date. The application is pending and the Council considers that this site is capable of delivering net 56 units. This is lower than the 61 identified in the LAA. The appellant has argued that the site should only count at 38 dwellings as this is the figure specified in the brownfield register. The brownfield register represents a different statutory scheme. The Council has based its approach on the current application which is for 74 units following the demolition of 18 existing units (see application form - Appendix 4.2). While the Environment Agency have raised concerns over the Flood Risk modelling used (Appendix 4.3), this is based on the EA providing the wrong Product 4 data to the applicant. The EA objected on 28<sup>th</sup> September 2023 and 30<sup>th</sup> October 2023 and has sought a revised Flood Risk Assessment to address issues relating to climate change allowances, whether flood compensation is required and finished floor levels. This is considered to be resolvable. The applicant is working on amendments to the FRA and it is expected that a decision will be made on the application within 3-6 months. Therefore, the LPA consider that the amount of development proposed in the application, rather than brownfield register, is a more accurate assessment of the likely housing delivery on the site. For these reasons, the Appellant's suggested deduction from 56 to 38 dwellings is not merited, and the figure of 56 should be retained. For these reasons, the Appellant's suggested deduction from 56 to 38 dwellings is not merited, and the figure of 56 should be retained.

**SoCG Table E: Sites with a resolution to permit planning permission since 31<sup>st</sup> March 2023**

- 3.19 There have been a number of planning permissions granted and resolution to grant since 31<sup>st</sup> March 2023. Some of the sites in the AMR have also had permission refused or granted for a lower number of units. These are set out in Table E of the SOCG. These permissions add 396 dwellings to potential housing delivery in Years 1 to 5.
- 3.20 In each case, the Council has considered whether there was realistic prospect that housing would be delivered on the site within five years by reference to the position at the base date. A significant number of the Sites were identified in the LAA and thus the adjustment is to a site that was already considered deliverable.



- 3.21 Where a Site was not identified in the LAA, the Council has carefully reviewed the site-specific circumstances and the position as at the base date in respect of that Site.
- 3.22 The Appellant agrees that 87 dwellings would come forward from windfalls in Year 4. Windfalls are from sites with 1-4 dwellings. The sites identified below relate to sites with 5 or more dwellings.

Table 3: Sites with a resolution to permit planning permission since 31<sup>st</sup> March 2023

Site	No. of additional dwellings
Brooklands College	235
Members Hill	119
Copsem Manor	13
AC Court	18
Ikona Court	0
142 High Street	1
103 Ashley Road	5
63 Bridge Road	5
<b>Total</b>	<b>396</b>

#### Site 5 - Brooklands College, Weybridge

- 3.23 This site at Brooklands College has a resolution to grant permission dated 5<sup>th</sup> December 2023 for 320 units (ref: 2023/1359). The Section 106 agreement is almost completed so it is anticipated that the permission will be issued in the next month. In terms of delivery, the developer Cala Homes has provided a phasing plan (Appendix 5.3) which shows the majority, 235 of the 320, are expected to be delivered before the end of December 2027. Some of the 71 units planned for 2028 may be completed prior to March 2028.
- 3.24 As with all Table E Sites, the Council has considered the position as at the 1 April 2023 base date.
- 3.25 The site Land Availability Assessment did not include this site given its location in the Green Belt.
- 3.26 The Council has now reviewed this in the light of the history of the site during early 2023.
- 3.27 Pre-application discussions had taken place since 25<sup>th</sup> October 2021 and therefore at 31<sup>st</sup> March 2023, Officers were aware that an application for a significant number of dwellings was imminent. Prior to 31<sup>st</sup> March 2023, Cala Homes and Brooklands College held public consultation events and published a website [www.brooklandsgrove.co.uk](http://www.brooklandsgrove.co.uk). This included a public consultation on 12<sup>th</sup> July 2022 (Appendix 5.5).

- 3.28 The Application 2023/1359 was submitted on 10<sup>th</sup> May 2023, only shortly after the base date and was in due course recommended for approval, given the specific very special circumstances that arose on that site.
- 3.29 There was therefore clear evidence as at the base date that there was a realistic prospect that housing would delivered on the site within five years.

#### Site 6 - Members Hill, Brooklands Road, Weybridge

- 3.30 The Land Availability Assessment 2023 identifies the site in Appendix 2: Sites with planning permission at 31 March 2023 for 57 units due to prior approval granted under 2020/3345 and 2021/2626. The Site was therefore recognised as deliverable as at the base date.
- 3.31 Planning permission was granted under 2022/2746 for 205 C2 self contained units. This application was received on 5 September 2022 and therefore was live at 31 March 2023.
- 3.32 The site was only excluded from the LAA because permission was not granted until 18 July 2023. Therefore this change is simply an uplift on a site already in the LAA.
- 3.33 Application 2023/3294 is a S73 application which proposed to reduce the number of units to 176. This is due to changes required under new Building Regulations. Therefore the Council submits that the uplift from the LAA should be 119.

#### Site 7 - Copsem Manor, 50 Copsem Lane, Esher

- 3.34 Copsem Manor, 50 Copsem Lane is identified in Table B (Sites under Construction) for 6 dwellings in relation to application 2021/2254. This relates to three pairs of semi-detached houses at the rear of the site.
- 3.35 Planning permission was subsequently granted under ref: 2023/0324 for 14 dwellings. This application was received on 2 February 2023, therefore prior to the base date of 31 March 2023.
- 3.36 However, it was not registered until 6 April 2023 and therefore is not referred to in the LAA against the site. The permission is for the conversion and extension of the existing house at the front of the site to provide 14 flats, therefore a net addition of 13 units (Appendix 7.1).

#### Site 8 - AC Court, Thames Ditton

- 3.39 With regard to AC Court in Thames Ditton, Table B (Sites under Construction) refers to Unit 2 and 6. The LPA agrees with the appellant that 13 units were

under construction at 31 March 2023. Subsequent prior approvals have been granted for 25 flats.

- 3.40 The LAA identified 38 units. Subsequent prior approvals have been granted for 18 flats, giving a total of 31 on the site.
- 3.41 2023/1791 granted the conversion of Unit 7 to 6 flats on 17 August 2023. This application was received on 26 June 2023, shortly after the base date. 2023/3355 granted the conversion of Unit 1 to 12 flats on 17 January 2024. This application was received on 6 December 2023, after the base date.
- 3.42 The LAA had considered the potential for the conversion of the whole site when identifying potential for housing delivery and therefore at the base date there was a reasonable expectation that the conversion of the other blocks would come forward and be deliverable within a short timescale and well inside the 5 year period.

#### Site 9 – Ikona Court, Weybridge

- 3.43 This site is included within Appendix 1 of the LAA: Sites under construction at 31 March 2023 and therefore does not add to supply.
- 3.44 Permission was granted for the same scheme for 7 units under 2019/3163 on 20 July 2020. This expired on 20 July 2023. Application 2023/1382 was received on 12 May 2023, after the base date.
- 3.45 While the LAA states that the site was under construction, the officer photos for 2023/1382 indicate that this was not the case and therefore the application was in effect a resubmission of the same scheme.

#### Site 10 – 142 High St, Esher

- 3.46 The site is included within Appendix 1 of the LAA: Sites under construction at 31 March 2023 for 5 units with reference to application 2021/4194.
- 3.47 Application 2023/0491 was registered on 10 March 2023, prior to the base date. The proposal is for the conversion of the former social club building into 6 flats and was granted on 28 April 2023.
- 3.48 Therefore this amounts to an uplift of 1 unit from the LAA.

#### Site 11 - 103 Ashley Rd, Walton on Thames

- 3.49 This site was not identified within the LAA. Application 2023/2091 is for a pair of semi-detached houses and conversion of the existing house into 4 flats, therefore a net increase of 5. The application was received on 24 July 2023, after the base date. However, planning permission had been granted for the same number of units under 2022/3532 which was received on 21 November 2022, prior to the base date.

- 3.50 This was granted on 28 April 2023 and therefore would not have been counted in the LAA as a permission. Moreover, an earlier application (2021/4379) had been refused on 22 August 2022, which is why the later application was not identified in the LAA. In short, the Council considers that the LAA should not have excluded this site as it was deliverable as at the base date.

#### Site 12 - 63 Bridge Rd, East Molesey

- 3.51 This site is not identified within the LAA. Application 2023/2311 was received on 24 July 2023 and granted on 24 November 2023 to change the use of the ground floor from office to residential and increase the number of flats from 3 to 8, a net increase of 5. Prior to the base date the Council received a pre-application enquiry on 15 March 2023 for the same proposal. There was therefore a realistic prospect of delivery as at the base date.

#### Site 13 - Building B, 205 St George's Business Park

- 3.52 This permission is a reduction on the prior approval granted under 2021/1948 and therefore having reviewed the information, is no longer considered to result in an uplift. The LAA 2023 identifies St George's Business Park in Appendix 2: Sites with planning permission at 31 March 2023 for a total of 136 units.

- Block A – 57 units
  - 40 units from 2021/1949 prior approval granted 27/08/2021
  - 17 units from 2021/1954 prior approval granted 27/08/2021
- Block B – 35 units
  - 28 units from 2021/1948 granted 27/08/2021
  - 7 units from 2021/1954 prior approval granted 27/08/2021
- Block D – 38 units
  - 38 units from 2021/2803 prior approval granted 15/10/2021
- Block E – 20 units
  - 20 units from 2021/2805 prior approval granted 15/10/2021

- 3.53 Subsequent applications for the redevelopment of the site are currently under appeal in relation to non-determination of applications 2023/2167, 2023/2169 and 2023/2170. The proposal amounts to 243 units. The Council is opposed to the applications and therefore an uplift is not proposed. The Public Inquiry for the appeal is scheduled to be heard from 14 to 23 May 2024.

#### Other Sites

- 3.54 It is noted that windfall permissions will continue to be granted which were not identified in the LAA or Table E in the Statement of Common Ground. Another example is Abbey House, Brooklands Road, Weybridge which received a resolution to grant permission at Planning Committee on 12 March 2024 for 106 flats under application 2022/1272 subject to a legal agreement.

The application was received prior to the base date but the LAA identifies the site as having planning permission for 52 units under Site US534. The LAA references the prior approvals under 2020/1502, 2020/2483, 2020/3278 and 2021/2695 but does not make reference to application 2022/1272. Therefore an uplift is not proposed for this site.

### Summary

- 3.55 The Appellants dispute the inclusion of all the above Table E sites. They are concerned that their inclusion, without corresponding adjustments to supply (omitting completions in intervening period together with any lapses/expiries or those which have been superseded) skews the housing land supply position.
- 3.56 However whilst the decisions were made after 31 March 2023, in most cases the Council had been involved in pre-application discussions or there had been previous applications. All of the permissions are available to view on the Council's website. The Appellants have themselves referred to changes in the status of sites within the AMR since 31 March 2023 in arguing deliverability, therefore permissions since 31 March 2023 are also considered relevant to demonstrate housing land supply.
- 3.57 Appendix 13 sets out sites granted planning permission for 1-4 units to avoid any potential double counting of windfall sites. These have been included to show delivery on smaller sites.

### **A windfall allowance**

- 3.58 The windfall contribution included in the Four Year Housing Land Supply position above includes 87 dwellings in year four which is agreed in the SOCG.
- 3.59 Paragraph 72 of the NPPF allows windfalls to contribute towards the anticipated supply provided there is compelling evidence that they will provide a reliable source of supply. When considering whether windfalls should be included in the supply national policy requires regard to be paid to the "strategic housing land availability assessment, historic windfall delivery rates and expected future trends".
- 3.60 The Land Availability Assessment (LAA) identifies potential housing sites to provide 5 or more dwellings. The latest version of the LAA was published in February 2024 and has a base date of March 2023 (CDE.14) and therefore, provides an up to date position with regards to potential windfalls sites. However, it is noted that many windfalls sites are for fewer than 5 dwellings and therefore, would not be included in the LAA.
- 3.61 Windfalls have historically made a contribution towards the Borough's housing supply because there are no site allocations in the current Development Plan. It is reasonable to assume that they will continue to contribute in the same

way especially with the recent changes to permitted development rights which support the delivery of additional dwellings.

- 3.62 When projecting future windfall trends the Council has adopted a cautious approach and only made an allowance for windfalls in the final year of the four year period to avoid double counting with any outstanding planning permissions. This equates to 87 dwellings over the five year period. The Council maintains windfalls will continue to make an important contribution towards the housing supply and should be included in the four year supply.
- 3.63 As part of the Council's ongoing monitoring of development sites, Planning Policy Officers also regularly contact colleagues in the Development Management Team to obtain updates on current planning applications. These emails also form part of the evidence for the Council's five year housing land supply where applicable.
- 3.64 The evidence provided is considered to constitute 'robust, up to date evidence' as required under Paragraph 007 Reference ID 68-007-20190722 of the NPPG. Although some of the evidence is not the examples of evidence referred to Paragraph 007 Reference ID 68-007-20190722 the wording of the NPPG does not state that only this form of evidence is deemed to demonstrate a site is deliverable. The Council, therefore, considers the evidence provided to be robust and up to date.

#### 4. Conclusions in relation to Housing Land Supply / Summary Proof

##### Housing Land Supply Figure

- 4.1 The Council considers it has a 4.14 year supply of housing land whilst the Appellant considers the Council has 3.51 years' worth of supply.
- 4.2 I agree that 495 dwellings should be removed from the Council's 4YHLS figure compared to the position stated in the Land Availability Assessment 2023. I therefore conclude that the 4YHLS, at the 31<sup>st</sup> March 2023 base date is 2,313 dwellings. Against the local housing need and without a 20% buffer, this equates to 3.56 years as shown in Table 3.
- 4.3 However, I consider that permissions since the base date of 1<sup>st</sup> April 2023 should also be taken into account on top of the windfall allowance. In particular, the resolution to grant 320 dwellings at Brooklands College under application 2023/1359, which in itself would cancel out much of the Appellant's proposed deductions.

Table 3: 4 Year Housing Land Supply - LPA vs Appellant Position

	Council	Appellant
<b>Requirement</b>		
Annual housing requirement	650	650
4 year housing requirement (A x 4 years)	2,600	2,600
<b>Supply</b>		
Sites under construction (LAA Appendix 1, Table B)	845	845
Sites with planning permission (LAA Appendix 2, Table C)	1263	1263
Sites with planning permission with 10% discount	1137	1137
LAA Sites for delivery in years 1-5 (LLA Appendix 3, Table D)	228	210
Windfalls	87	87
4 YHLS at 1 <sup>st</sup> April 2023	2,297	2,279
Supply in years	3.53 years	3.51 years
Undersupply against 4 year housing requirement and buffer	-303	-321
Permissions and resolution to grant since 1 <sup>st</sup> April 2023 not included in LAA	396	n/a
Deliverable supply including permissions since 1 <sup>st</sup> April 2023	4.14 years	n/a

##### Steps to Increase Housing Land Supply

- 4.4 In *Hallam Land Management v SSCLG* [2018] EWCA Civ 1808; [2019] J.P.L. 63, [51] the Court of Appeal held that if any shortfall were to be identified it is material to consider: “*the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.*”
- 4.5 Whilst I do not agree that there is a shortfall, if any shortfall was to be identified, as Head of the Development Management team, I can confirm that the Council is consistently taking steps to increase housing land supply. I shall single out two examples: (1) grants of planning permission and (2) the Local Plan.
- 4.6 First, in terms of grants of planning permission, the Council’s Development Management team try to ensure applications are determined in a timely fashion and in the context of our borough, officers know what sites are likely to come forward. Elmbridge is a busy planning department with frequently the highest number of planning applications received in Surrey each year. The percentage of applications granted is approximately 80%. As demonstrated by a number of Sites in Table E, the Council is able to determine policy-compliant applications rapidly. Permissions tend to be built out quickly due to land values. All of this supports the supply of housing.
- 4.7 Second, the submitted Local Plan will provide certainty for sites allocated. This is therefore a significant step towards increasing supply.
- 4.8 It should be noted that the Local Plan Inspector has requested an updated housing trajectory based on 452 dwellings per year, the plan’s proposed requirement figure. If the Local Plan Inspector accepts the Council’s proposed spatial strategy in the submitted Local Plan, the 5 Year Housing Land Supply requirement will be less and therefore a lower supply figure will be required.



## Affordable Housing

- 5.1 The Affordable Housing SoCG sets out the parties' respective positions on affordable housing need. The dispute between the parties is very narrow, effectively limited to one word, whether the weight to be accorded this should be "substantial" or "very substantial". Almost all of the underlying figures are agreed, but the core dispute centres simply on the (agreed) quantum of affordable houses that this Site will deliver and whether this should be accorded elevated weight in all the circumstances.
- 5.2 The most recent document, the Local Housing Needs Assessment 2020 identifies a need for 269 affordable dwellings per annum between 2019/20 and 2038/39. It is also agreed that using the Sedgefield approach, the accumulated shortfall of 717 dwellings against the 2020 LHNA would result in the need for 412 affordable dwellings per annum between 2023/24 and 2027/28, as opposed to 269 dwellings per annum.
- 5.3 Similar to many other Councils, Elmbridge has not been able to achieve high levels of affordable housing provision through developments due to the policy requirement to take into account viability. Elmbridge and the rest of the South East is recognised as having very high land values and property prices.
- 5.4 Elmbridge has sought to maximise affordable housing delivery by continuing to seek affordable housing contributions and provision on developments with a net increase of 1+ dwellings rather than the minimum 10 dwellings advised in the NPPF.
- 5.5 Table 4 set out the (gross) number of affordable housing dwellings for sites with planning permission or current applications. Based on my deliverable 4YHLS figure, I conclude that the affordable housing supply (gross) over the four year period 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2027 is 219 dwellings as set out in the following table:

Table 4: Affordable Housing Supply in Elmbridge (2023-2027, gross)

App	Site	No. of affordable housing units
2020/1222	145 Hersham Road, Hersham	18
2020/2095	Claygate House, 4 Littleworth Road, Esher	25
2021/3072	363-367 Molesey Rd, Walton on Thames	2
2019/2381	Station House, The Parade, Claygate	1
2022/3525	Sundial House, The Molesey Venture, Orchard Lane, East Molesey (Pending)	20
2022/1680	9-21a High Street, Walton on Thames	25
2023/1359	Brooklands College, Heath Road, Weybridge	128
Total		219

- 5.6 The Council does not dispute that there is an acute national housing crisis and that there is an acute need for affordable housing across Elmbridge Borough and the wider south of England, and annual need has not been delivered to date.
- 5.7 However, as set out in the SOCG, the parties agree that a proposal's contribution to meeting affordable housing need is a matter that can be taken into account as an "other consideration" when assessing whether there are Very Special Circumstances.
- 5.8 The LPA attribute "substantial" rather than "very substantial" weight because the 30 affordable housing units simply meets the Policy requirement under Policy CS21 of the Core Strategy. While the Appellant notes that the proposal exceeds the draft Local Plan requirement, this has not been through the Examination in Public yet.
- 5.9 The Appellant issued an Request under the Freedom of Information Act on 21<sup>st</sup> February 2024. The deadline for the response is 20<sup>th</sup> March 2024. The Council's relevant officers are responding this to as quickly as they can, subject to existing workloads and commitments in respect of the Local Plan. I have provided the following information (where available)(see Appendix 15).