

## **LEEDS CITY COUNCIL STATEMENT ON THE 5 YEAR LAND SUPPLY**

### **The 5 year land supply**

1. PPS3 requires Planning Authorities to maintain a 5 year supply of deliverable land for housing at all times. If they are unable to demonstrate such a supply, “they should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in paragraph 69” (Para 71).
2. The 5 year supply would normally be expected to be identified through a Strategic Housing Land Availability Study (SHLAA), but if this is not yet published, authorities “will need to assess and demonstrate the extent to which existing plans already fulfil the requirement set out in this statement to identify and maintain a rolling 5 years supply of deliverable land for housing” (para 7). In March 2007, CLG issued Advice to Government Offices and the Planning Inspectorate on how such interim assessments should be made (“Demonstrating a 5 year supply of deliverable sites”).
3. The inaugural Leeds SHLAA began in September 2008 and is still in progress. It is unlikely to be finished much before the end of this year. Consequently, the Council undertook a second interim appraisal of the 5 year land supply, which was published in December 2008. This report and supporting schedules are submitted as Appendix 1.
4. The appraisal gives supply figures for 2008-13 and 2009-14, but it is the latter figures that the Council is relying on for this appeal, since they cover the current 5 year period. The conclusions of the appraisal are summarised in the table at paragraph 54 of the report. This shows that a gross supply of 18865 dwellings was identified for 2009-14. After allowing for estimated clearance of 1275 dwellings, this gave a net supply of 17590 dwellings.
5. The adequacy of the identified supply depends on how it relates to the 5 year requirement. Calculation of the requirement is discussed in paragraphs 57-70 of the appraisal. CLG guidance on this matter is relatively reticent, but the PINs advice seems to favour the residual method (para 58). The residual method can be applied in different ways. The Council’s view is that it is most appropriate to base the requirement on the Managed Delivery Target (Indicator H2(d)) set out in table 4 of the 2008 LDF AMR (Appendix 2).
6. This gives a 5 year requirement for 17600 dwellings over 2009-14. This is just 10 dwellings short of the identified supply, and the Council therefore believes the 5 year supply to be adequate.

### **Oulton Hall Appeals**

7. Last year, Oulton Hall (IOM) Ltd appealed against refusal of planning applications for housing on two sites in south Leeds. Housing land supply was a major issue in these appeals, and the Inquiry, which began in November 2008, was adjourned for 3 months to allow the Council’s latest appraisal of the 5 year supply to be considered.
8. The Inspector issued his decision letter on 16 March 2009 (Appendix 3). On land supply, he concluded that “a more realistic estimate of the deliverable supply calculated in accordance with DCLG advice would be likely to be about 3 years at the RSS annual average. On this basis the Council has not at present demonstrated a robust 5 year supply of housing land.” (para 24). This conclusion related to the 2008-13 period, and the supply accepted by the Inspector appears to equate to a net supply of approximately 12900 dwellings, compared to the Council’s figure of 17688 for that period.

### **Council response to appeal decision**

9. The Inspector's decision has been discussed by City Development officers and with Lead Members, and the Council has decided that it cannot agree with the Inspector's conclusions on housing land and other aspects of his decision letter. A report will be presented to the June meeting of the Council's Executive Board (the earliest date possible given report deadlines) setting out the reasons for this response. If available in time, this report will be submitted to this Hearing.
10. On the specific issue of the 5 year supply, the Council disagrees with the Inspector for the following reasons:
  - His formal conclusion relates to the period 2008-13, but it is now appropriate to look at 2009-14,
  - In determining the 5 year requirement, he gives insufficient weight to policies H1B and Table 12.2 of RSS, to the targets in the Local Area Agreement for Leeds and to Core Indicator H2(d) in the LDF AMR,
  - He takes no account of the implications of the general economic and housing recession for the delivery of new housing or for the approach to this matter in PPS3,
  - He does not fully explain how he arrives at his conclusion that there is only about a 3 year supply, and reasons for discounting supply identified by the Council are either not given, not adequately explained, or not persuasive.
11. The remainder of this statement amplifies these points.

### **Time period**

12. The Inspector was presented with supply data for both 2008-13 and 2009-14, and discussion of its validity was often in terms of the six year period as a whole, but it is apparent from paragraph 13 of his decision letter that his formal findings relate to 2008-13. Given that the first year of this period is now past, the Council considers it appropriate to consider the present appeal in terms of the 2009-14 supply. Strictly speaking the Inspector's formal conclusion does not apply to this supply, which therefore needs to be considered afresh (although the Council accepts that had the Inspector formally adjudicated on the 2009-14 supply, his conclusion would probably have been very similar).

### **5 year requirement**

13. In order to evaluate the Inspector's conclusions on this, it is necessary to consider the relevant information before him. A brief resume is given below (more details are in the Council's appraisal, Appendix 1, from para 57).
14. Calculation of the 5 year land requirement is relatively complicated, partly because of the brevity of CLG guidance. The only advice appears to be that contained in paragraph 5(i) of the PINs advice, which says that the requirement should be derived from figures in adopted development plans, "adjusted to reflect the level of housing that has already been delivered (within the lifetime of the current plan)". This the Council takes to be a reference to the residual method which involves calculating the total requirement over the life of the plan, deducting dwellings actually built in the plan period to date, and dividing the product by the number of years remaining in the policy in order to establish the residual annual need. This figure is multiplied by five to give the 5 year requirement.
15. The relevant development plan for Leeds is the Yorkshire & Humber Plan RSS Review, adopted in May 2008, which gives average annual net additions to the housing stock of 2260 in 2004-8 and 4300 in 2008-26. Inserted into a residual

calculation, these figures give 5 year requirements of 20410 2008-13 and 20570 2009-14. (Appendix 1, para 61)

16. The trouble with this method of calculation is that it effectively assumes that the dramatically increased 2008-26 requirement comes into force immediately in 2008, whereas it is clear from RSS policy H1B and Table 12.2 that output is only expected to increase gradually to this average figure.
17. Policy H1B of RSS states that the growth from 2008 should be achieved “taking account of indicative timing” given in Table 12.2. Table 12.2 shows that Leeds is one of a number of areas where “annual net housing growth (is) likely to rise from below the 2008-2026 average to above it”. It is considered that this can only mean that a lower level of output will in fact be acceptable in the first years after 2008, presumably to allow time for the LDF process to put in place new development plan policies to enable production to be expanded.
18. The Council’s view is that this policy intent needs to be built into the calculation of the 5 year residual requirement. This can be done by basing the requirement on the NI154 targets included in the Local Area Agreement concluded between the Council and the Government in July 2008. NI154 is a target for net additions to the housing stock, and the LAA adopts a target for an annual average net increase of 3400 dwellings over the three years 2008-11, 900 below the average RSS requirement. The acceptance of this target by CLG implies in the Council’s view that CLG regard it as consistent with RSS policy, and the Department has subsequently confirmed that the “LAA target can be used for land supply purposes” (email dated 5/11/08). CLG also appear to have used the target when awarding Leeds Housing Planning & Delivery Grant for possessing an adequate 5 year land supply in 2007-12.
19. The NI154 target only runs to March 2011, but the Council has extended this in the Managed Delivery Target set out in Table 4 of the 2008 LDF AMR. The managed delivery target is a new Core Output indicator introduced in update 2/2008 of the RSS & LDF Core Output Indicators document published in July 2008. According to the definition in this document, this indicator “should not be presented as an annualised average but as a meaningful reflection of how housing is expected to come forward over the remaining plan period taking into account the identification and provision of deliverable sites and any other influence on housing delivery including market trends”. In essence, it is an alternative route-map towards the RSS target.
20. The managed delivery target can be seen as a way of managing the step change from delivering net gains of 2260 a year up to 2008 to delivering 4300 thereafter, that is consistent with the aims of policy H1B and Table 12.2. Starting from the LAA target of 3400 for 2008-11, the managed delivery target gradually raises this to a figure of 4500 p.a. from 2017-8 almost to the end of the RSS period. This profile meets the overall RSS requirement by 2026 without calling for vastly inflated output in later years, but also gives time for the LDF to increase the supply of land to enable these later targets to be achieved. For the period 2009-14, it yields a requirement of 17600 dwellings, which the Council submits is compatible both with the intent of RSS policy and the LAA target.
21. The Inspector’s discussion of the 5 year requirement is to be found mainly in paragraphs 24-26 of his decision letter. Paragraph 24, in describing the 5 year supply as equivalent to about 3 years at the RSS annual average appears to imply that the requirement can be represented by the average RSS rate regardless of past

performance. If this is the implication, it appears to be contrary to the PINs advice, which seems clearly to favour a residual approach.

22. Paragraph 25 acknowledges that account needs to be taken of RSS Table 12.2, as quoted above, describes the increase between 2004-8 and 2008-26 as “relatively large”, and notes that there is no RSS timescale for stepping up output. Paragraph 26 accepts that the LAA NI154 target figures have been used by CLG to allocate HPDG, and agrees that “this indicates that CLG have accepted a lower rate of delivery in the early years and in practice it would be unlikely that Leeds would achieve a sudden and sustained increase in annual completions”.
23. All these comments appear to be broadly consistent with the case that the Council had been advancing. Consequently, it comes almost as a non sequitur to find paragraph 26 concluding with the remark that “I am not convinced that the RSS is allowing the Council to adjust gradually to the new housing targets”. In the Council’s view, this statement is in direct conflict with the understanding that the Inspector had set out in the previous sentences, and is not otherwise substantiated. Moreover, he has no suggestion as to what the purpose of H1B and Table 12.2 could possibly be if it were not the one on which he suddenly casts arbitrary doubt.
24. The Council’s view therefore is that the Inspector’s concluding clause is invalid, and that RSS does in fact intend that output in Leeds rise from below the 2008-26 average initially to above it later, as recognised by the LAA targets which the Inspector does not dispute. Consequently, it is appropriate that the 5 year requirement should be calculated in a way that recognises this intent. Although the Managed delivery figures from the LDF AMR are not discussed at all by the Inspector, the Council submits that these are a reasonable way of achieving this. It is concluded that the figure of 17600 is a fair quantification of the 2009-14 requirement.

### **Impact of recession on housing delivery**

25. Paragraphs 18-25 of the Council’s appraisal of the 5 year supply (Appendix 1) raise important points of principle about the implications for the assessment of deliverability of the severe recession that had descended on the housebuilding industry earlier in the year. This issue is of special significance because it underlies many of the differences about phasing and viability in the contending assessments of supply considered in the Oulton appeals. Yet the Inspector makes no specific reference to this vital issue in his decision letter, either to confirm or deny its relevance. In the Council’s opinion, it is impossible to come to a coherent view about deliverability without directly confronting the implications of the housebuilding recession. The arguments outlined in the Council’s original appraisal are amplified below.
26. The two most important determinants of the achievable level of housebuilding are probably the size and make-up of the housing land supply – the raw material without which building cannot take place – and the strength of market demand for the finished product. Output is optimised only if these factors are in balance. If there are insufficient sites to meet demand, then demand will go unmet. Conversely, sites will remain undeveloped if effective demand is deficient. In principle, stimulating demand will not get more houses built if the sites are not available, any more than increasing the land supply will if the problem is lack of demand.
27. 5 year supply assessments are primarily about the supply of land for development. They aim to establish the level of housebuilding that the identifiable land supply could reasonably be expected to support. If the supply is found to be inadequate to meet

housebuilding targets, the prime remedy is also supply based – namely, to release more land (PPS3, para 71). The underlying assumption is that problems of under-delivery of housing are resolvable by increasing land supply.

28. 5 year supply assessments are not aimed at assessing the level of housebuilding that could be supported by the expected level of demand for housing. There is no reference in PPS3 to the strongly cyclical nature of the housebuilding industry, which is largely a response to variations in demand for housing, and means that construction can vary considerably at different stages of the housebuilding cycle.
29. As is well-known, the global economy has entered a severe recession, described by many as the worst for 50 years in the UK. The housebuilding industry has been very badly affected, as is apparent from numerous media and Company reports, mortgage and housebuilding statistics, house and land price data etc. There has been a collapse in demand for housing nationwide. Nationally, to take just one indicator, new starts in England have plummeted from an average of over 170,000 a year in 2004-7, to 104,500 in 2008 (CLG Live Table 222). Locally, new starts have been running at 70-80 a month at best since mid 2008 – equivalent to an annual rate of barely 1000 and compared to a monthly average of 330 in the four preceding years..
30. It is clear that the recession will have the effect of severely depressing output for at least the next one or two years. The effects will be felt in most parts of the country. Even when activity begins to recover, there is likely to be further delay before output returns to pre-recession levels. The recession will therefore have major implications for the delivery of housing over the next 5 years, and hence for land supply assessments being undertaken now.
31. The big question for these assessments is how to handle these recessionary effects. Although assessments focus on land supply rather than demand, one of the tests of the ability of sites to deliver housing is achievability. The PINs advice says that this test is satisfied if there is “a reasonable prospect” that housing will be delivered on the site within 5 years. The test is further explained in the SHLAA Practice Guidance as being “essentially a judgement about the economic viability of a site” (para 40) – whether there is likely to be a market for the housing product at a price sufficient to cover the costs of development and an adequate profit margin for the developer.
32. This definition of achievability moves the assessment away from relatively pure supply side criteria of deliverability – suitability and availability – to the consideration of wider demand factors that are extrinsic to the nature of the sites themselves. In the context of the present housebuilding recession, it is an open invitation for assessors to disqualify sites on the grounds that the recession precludes their delivery in the next 5 years.
33. It is the Council’s view that this is exactly what the appellants in the Oulton appeals have done in their assessment of deliverability. Significant amounts of capacity have been discounted on phasing or viability grounds (see next section for the quantities involved), the implication being that the recession has either put back the delivery of capacity within the 5 year period or rendered it altogether unviable in the next 5 years. By accepting this version of the figures, the Inspector has implicitly endorsed the view that the 5 years supply should reflect the impact of the recession - although without overtly considering whether it is appropriate to do so.
34. In the Council’s opinion, it is wrong to rule out capacity that would be perfectly deliverable but for the depressed state of the market, for the following reasons:

- The barrier to delivery posed by the recession is not a function of individual housing sites, but of the lack of demand in the economy as a whole. In the PPS3 regime, the solution proposed to delivery shortage is to release more sites, not to address the underlying demand weakness that is the real cause of the problem. Releasing more sites is unlikely to have much impact on delivery, because builders are unable or unwilling to undertake much development on any sites, good or bad, while the recession lasts. It would just add to the stock of sites (there are outstanding permissions for 24000 dwellings in Leeds at present) waiting for market conditions to improve. In short, the analysis of the problem is misconceived and the remedy is likely to be ineffective.
  - The adequacy of the land supply is evaluated by comparing it with housebuilding targets derived from development plans. In the case of Leeds, these are long term average targets, not necessarily to be achieved every year, but there is no mechanism in the policy for varying the requirement in response to real world conditions. In the PPS3 regime, the method of calculation specifically rules out any possibility of adjusting the requirement to reflect the effect that the present recession will have on the scope for delivery. If the requirement is calculated in a way that ignores the impact of the recession, but the assessment of supply is expected to take account of it, there is an obvious imbalance in the comparison. Locally, this imbalance is especially pronounced, because as shown in Appendix 1 of the Council's land supply appraisal (Appendix 1 to this document), the development plan targets for Leeds are predicated on the existence of optimum market conditions and are thus by definition unattainable in the present adverse climate. In the Council's view, the impact of the recession should either be fully accounted for or fully discounted in both requirement and supply figures.
35. The Council is not proposing that demand factors be ignored in the assessment of deliverable supply. It accepts that there are market constraints which stem directly from the characteristics of the local land supply, that these constraints can limit achievable output, and that they are capable of resolution by site substitution or addition. These factors are listed in para 22 of the Council's appraisal, and are:
- The existence of numbers of competing sites offering much the same product within a restricted geographical location, with a capacity likely, on any reasonable estimate, to be significantly greater than that of the local housing market within the relevant timescale.
  - Sites of such poor quality in terms of specific characteristics and general location as to cast severe doubt upon the viability of development even in the most favourable of market conditions.
  - Very large sites where the rate of construction is restricted by market capacity, resulting in deliverable supply being spread over several years.
36. The Council regards these constraints as endogenous to the local land supply and has made every effort to identify and reflect them in its assessment of deliverable supply. They are to be distinguished from the effects of economic recession, which the Council characterises as an exogenous factor, independent of the local housing market and not susceptible to remedy by local supply side action. The Council's aim has been to exclude this consideration from the assessment.
37. Whether or not this approach is considered to have merit, the Council submits that it is at least a coherent approach to a contingency that does not seem to have been

anticipated in the PPS3 literature, but that needs to be addressed. The issue is clearly identified in the Council's appraisal, and should have been considered explicitly by the Inspector. His failure to do so undermines the authority of his conclusions.

### Detailed discussion of supply

38. This final section looks in some detail at the discernible steps by which the Inspector reached his conclusion that there was only about a 3 years' net supply of land for 2008-13 at the RSS rate. This conclusion comes at the end of a section beginning at para 15 of his decision letter in which he passes comment on the net differences between the two parties identified in the proof submitted by John Townsend on behalf of the Council. A copy of this proof is attached as Appendix 4.
39. The main summary of the differences is given in the table at paragraph 3.6 of the proof, but it is also necessary to include the infill allowance discussed separately at para 4.2 in order to follow through the Inspector's working. It must also be remembered that his conclusions relate to the figures for 2008-13, so that totals for 2009-14 and 2008-14 have to be ignored for the purposes of this exercise.
40. The Inspector's conclusion indicates that he thought that there was a net supply of land for about 12900 dwellings over the period 2008-13. To get to this figure, he starts with the gross supply of 11157 identified by the appellant, quoted in para 14 of the decision letter. This represents Council identified capacity agreed by the appellant. The journey from this initial gross figure to the final net result involves firstly accepting or rejecting (in whole or in part) each of the net differences identified in the Council's proof. The resulting adjusted gross figure then has to be converted into a net total by deducting clearance. The Inspector does not mention clearance at all – possibly he overlooked it, or else it must be assumed that, like the appellant, he accepted the Council's figure of 1275 for the 5 year period.
41. The course of this transition is summarised in the table below. This shows for the categories identified by the Council the net difference between the contending figures, the quantity accepted or rejected by the Inspector, if known, and the paragraphs in the decision letter where the matter is discussed. The values in the "Inspector's view" column represent the capacity discounted by the appellant but reinstated by the Inspector.

| Element of supply           | Net difference between appellant & Council | Inspector's view | Discussed     |
|-----------------------------|--|------------------|---------------|
|                             |  |                  |               |
| <b>All categories</b>       | <b>7806</b>                                | <b>11157</b>     |               |
|                             |  |                  |               |
| Site complete               | 68   | 68               | Para 15       |
| Site duplicated             | 98   | 98               | Para 15       |
| Site in Easel Joint Venture | 200  | 0                | Para 16       |
| Site in Easel area          | 369  | 369              | Para 16       |
| Developer in liquidation    | 254  | 109              | Para 17       |
| Miscellaneous               | 301  | ?                | Not discussed |
| No planning application     | 1269                                       | 850              | Para 20       |
| Phasing difference          | 1351                                       | ?                | Not discussed |
| Student housing             | 845  | 0                | Para 22       |
| Site too small              | 134  | 0                | Para 21       |

|   |      |              |               |
|---|------|--------------|---------------|
| Viability   | 1733 | 0            | Para 23       |
| Other timing                                      | 254  | ?            | Not discussed |
| Infill  | 930  | 0            | Para 21       |
|   |      |              |               |
| <b>Inspector's revised gross supply</b>           |      | <b>12651</b> |               |
| <b>Revised net supply assuming 1275 clearance</b> |      | <b>11376</b> |               |

42. The table shows that three items were not discussed by the Inspector at all, so that his views on them are unknown. Overall, the capacity that he expressly reinstates adds only 1500 units to the appellant's starting figure, bringing it up to 12651. After taking account of clearance, this is equivalent to a net supply of 11376, coincidentally also some 1500 less than the net supply of about 12900 that he claims to exist in para 24.
43. The only conclusions that can be drawn from this discrepancy are that in reaching his conclusion, either the Inspector had in mind the gross figure of 12651, which is quite close to 12900, but had forgotten that it was not net; or that he had in fact reinstated other elements of supply discounted by the appellant which he had neglected to identify. These might have included all or some of the items not discussed. Either way, it has the unsatisfactory result of making it impossible accurately to follow his reasoning.
44. Before moving on to discuss the individual categories of supply excluded by appellant and Inspector, it is worth making some general points about the Inspector's treatment of the evidence:
- The Inspector's basic premise seems to be that the appellant's assessment is correct unless it can be shown otherwise. The onus appears to have been on the Council to show why the appellant's amendments should not be accepted, rather than on the appellant to show why they should. As a result, the basis of the appellant's judgements does not seem to have been subject to any great scrutiny.
  - The Inspector allows and places considerable weight on post hoc opinions and information about site delivery rather than relying on judgements that could reasonably be drawn on the basis of facts and opinions available at the time the Council's assessment was made in summer 2008. The most notable examples of this are the references to the initial Easel Joint Venture programme announced in November 2008, and to press reports concerning the Lumiere project in January 2009. The Council's understanding is that assessments of the 5 year land supply are intended to be made once a year, as part of the LDF AMR and/or the SHLAA annual updates. These assessments then stand as statements of the position until superseded by next year's statement. They are not intended to be live documents, subject to continuous review. Were they to be made so, it would impose an impossible information gathering burden on Local Authorities. As a matter of principle therefore, the Council believes that assessments should be seen as snapshots of the position at a point in time each year, open to criticism in the light of information available at that time, but not with the benefit of hindsight.
  - The Inspector appears to have had unconditional faith in the reported views of developers on site delivery. In paragraph 18 he says that contact with developers is recommended by the DCLG advice. By this is presumably meant the PINs advice, under the auspices of which the Council's assessment was undertaken. In fact, the Council's reading of the advice is that developer contact would be exceptional



rather than routine. The Council has explained its approach to this issue in paragraphs 12-14 of its appraisal. The difficulties about consulting developers in a PINs style assessment are partly logistical – the Council’s appraisal covered 900 sites – and partly relate to doubts about the stability and validity of the information received as a basis for estimating deliverability in a 5 year time frame. These latter doubts are borne out by the quality of quite a lot of the developer information used by the appellant to disqualify capacity. The following are a sample of the comments on which exclusion is based: apartment scheme unlikely to be delivered; Bellway pulled out; residential under review, new scheme likely; not in 5 years – apartment scheme; no s106 yet. A number of schemes are put back without any explanation whatever. The comment is often thin and frequently based on opinion rather than circumstantial evidence. There is nothing particularly wrong with this – assessments are after all matters of judgement rather than fact – but there does not seem any good reason to accord developer opinions oracular status, simply because of their source, as the Inspector seems to have done. In the Council’s view, developer opinions should not be regarded as inherently superior to the documentary approach followed by the Council, based on examination of planning histories, aerial photographs of sites, and Council Tax and Non Domestic Rates data. The assessments based on these sources especially in the case of emerging sites are often far more searching than those reported by the appellant, as a glance at the detailed site assessments should show.

- Identifying individual sites capable of delivery in a defined future period is a task fraught with uncertainty and thus a matter of judgement rather than fact. In such circumstances, it is useful to cross check the net effect of individual assumptions against past aggregate trends if possible, since aggregate data is inherently more stable than figures that emerge from numerous individual cases. In the Council’s appraisal and subsequent appeal statement, trend data was used at various points to guide or corroborate individual site judgements. In the appraisal itself (Appendix 1 paras 24-32) data on windfall leakage rates was used to estimate the proportion of existing windfall permissions outside the city centre that might reasonably be expected to come to fruition. It was shown that historically in Leeds barely 5% of windfall permissions had leaked, but for the purpose of the assessment, this was prudently increased to 15%. In a similar vein, it was shown that the appellant’s estimate of the quantity of housing likely to be delivered on emerging windfall sites was well below the bottom of the range predicted by past trends, whereas the Council’s estimate was right in the middle of the expected range (Council’s appeal statement , Appendix 2, section 2). The Council regards this information as significant intelligence which should have been taken into account in assessing the credibility of contending land supply estimates, but the Inspector makes no reference to it whatever. The failure even to discuss this relevant benchmark data further undermines confidence in his conclusions.
45. Turning to the individual categories, the Inspector accepts the appellant’s reduction of 200 in the contribution of **sites in the Easel Joint Venture** scheme (in paragraph 16 of his decision letter, he quotes 153 as the difference, but this is the figure for the six years 2008-14 rather than 2008-13). This new figure is derived from an initial development plan published in November 2008 after the Council’s appraisal was completed. It therefore represents post hoc information which the Council thinks should be inadmissible.
46. The appellant removed 254 dwellings on 5 sites where it was claimed that the **developer was in liquidation**. The Inspector adds back 109 of these on the basis of

evidence that they were largely built and being sold, but retained the rest of the reduction. He evidently gave no weight to the Council's argument that liquidation does not necessarily preclude development in the medium term, since the sites are assets which administrators will seek to dispose of to other companies able to pursue development. The sites all have the benefit of planning permission for housing and are in locations that are reasonably attractive for that purpose. The Council continues to believe that housing can be delivered on these sites in the assessment timescale.

47. The Inspector makes no reference to the 301 dwellings rejected by the appellant on **miscellaneous** grounds. As stated in the Council's proof, most of this was the result of calculation errors by the appellant or to a lesser extent disagreements about capacity. In the absence of any consideration by the Inspector, and in view of the large proportion of this exclusion that was the result of simple error, the Council considers that this capacity should be reinstated.
48. The appellant systematically deleted all sites for which **no planning application** had yet been submitted on the grounds that without an application, there was no certainty that delivery was possible within the assessment timeframe. Thus the existence of a planning application was made a necessary condition of delivery. Capacity for 1269 dwellings was deleted on these grounds.
49. The capacity excluded was all in the emerging sites category, which corresponds to the third class of sites considered eligible for consideration in the PINs advice – unallocated brownfield sites identified as suitable for housing and which have made sufficient progress through the planning process to be considered deliverable (PINs advice, para 5(ii)) The Council had taken this to potentially include sites on which planning applications had recently been refused or withdrawn but where a revised scheme could be acceptable, sites subject to undetermined applications or pre-application enquiries, and sites identified in various Council initiatives, including the Affordable Housing Strategic Partnership, a local PFI scheme and the Council's Capital Receipts programme (Appendix 1, para 3).
50. The Inspector's treatment of the 1269 no application dwellings in this category is mixed. He reinstates 850 dwellings with actual or prospective National Affordable Homes Agency funding, but retains the residual rejections, on the grounds that there is less certainty about their delivery. Most of the sites reinstated did not have planning permission or applications, so it is clear that he does not agree with the principle that an application is a necessary condition of deliverability.
51. The Council's view is that there is no justification for excluding sites simply because of the absence of a planning application. This condition is not specified in the PINs advice, and it is clear that the Inspector did not recognise it. Its use by the appellant as an Ockham's razor was simply a convenient device to evade proper evaluation of the affected sites – they could just be automatically cast aside without having to apply the deliverability tests.
52. Not only is rejection of these sites against the formal rules, it also makes no sense in terms of the nature of the process of mobilising sites for development. As pointed out in para 3.19 of the Council's proof (Appendix 3), there is always a stock of sites being actively considered for development which have not yet reached the stage of a planning application, and it is clear from past experience that sites actually developed over a future 5 year period will include some without permission at the base date. It is central to the purpose of 5 year supply assessments to try to identify these sites, and it only frustrates this purpose to interpose arbitrary rules that exclude potentially deliverable land without proper appraisal.

53. The Council therefore concludes that it is not reasonable to disqualify capacity simply because of the absence of a planning application. Consequently, the implicit acceptance of this procedure in the Inspector's decision not to reinstate the residual 419 units (1269-850) is not justified, and also runs counter to his decision in respect of the 850 units that he did add back.
54. The appellant excludes 1351 dwellings as a result of **phasing** the delivery of capacity outside the 5 year period. The Inspector makes no explicit comment on this exclusion in his decision letter, so it is impossible to know what he thought about it.
55. Some of these deferments were proposed by the appellant with no explanation whatever, but in general, in the Council's view, they were a direct reflection of the impact of the recession as perceived by the appellant and their informants. As such, the deferments should be seen as the result of exogenous market conditions rather than of an endogenous local housing land supply problem, as discussed above. The Council's view is therefore that these phasing deferments should be disregarded in the assessment of housing land delivery.
56. The Inspector supports the rejection of 845 units of **student housing**. This is justified by both appellant and Inspector on the grounds of the change of dwelling definition abruptly introduced by CLG in the 2008 Housing Flows Reconciliation Form and the Core Output Indicators Update 2/2008. Paragraph 22 of the Inspector's decision letter can be read as implying that the Council accepted this exclusion.
57. In fact this is far from the case – all that was accepted was the fact of the definition change in the documents cited, not its correctness. The Council's position remains that there are fundamental objections to excluding student housing from dwelling counts, as set out in paragraphs 3.24 - 3.30 of the Council's proof. Briefly, these objections are that:
- The change in definition was an unexplained and arbitrary departure from previous practice as well as current CLG practice in other housing forms (P2 quarterly return of dwelling starts and completions and Housing Strategy Statistical Appendix)
  - The change was inconsistent with CLG's fundamental definition of a dwelling as a unit of self contained accommodation, which most student housing satisfies.
  - Student housebuilding clearly has implications for housing supply in an area, both directly in supplying accommodation and indirectly in freeing up other housing for general use. Students are included in development plan housing requirement figures so student housing should also be included in enumerations of housing supply.
58. The Council is pursuing these objections with CLG, who have agreed that the definition needs to be clarified and will be referring the matter to the CLIP Housing and Planning Groups and the English Regional Network Monitoring Group. The Inspector did not address any of the Council's arguments, preferring to rely on the fact of the definition change in the documents cited. In the Council's view, this failure to engage with the substantive issues devalues his conclusion, which should therefore be set aside.
59. **Too small** and **infill** sites can be dealt with together. The PINs advice states that only unallocated sites that make a "significant contribution" to housing delivery should be included in assessments. On this basis, the appellant excluded 134 dwellings on identified unallocated sites for between 5 and 9 dwellings and a further 930 dwellings on unidentified infill sites for less than 5 dwellings. In paragraph 21 of his decision letter, the Inspector accepts these exclusions, quoting another appeal decision where the threshold of significance was set at 20 dwellings.

60. The Council is at a loss to understand the purpose of the suggested partial exclusion of small site capacity in the PINs advice (planning permissions and allocations are not subject to any size limitation). There is no similar exclusion in the SHLAA Practice guidance – the site threshold is a matter for agreement between the parties. The aim of assessments is to comprehensively identify delivery potential, but this cannot be done if legitimate capacity is excluded. The overriding criterion for inclusion of capacity should be whether there is a “reasonable prospect” of delivery in the assessment period, not the site size. To exclude small sites from the supply is to distort the comparison with the requirement, since the supply would be knowingly under estimated. Although perhaps insignificant individually, collectively small sites and infill in fact make a significant contribution to supply – the combined total of 1064 dwellings is 6% of the supply identified by the Council. For all these reasons, the Council cannot accept that it is rational to exclude this capacity.
61. The appellant rejects 1733 dwellings on sites where development is said to be **unviable**, and the Inspector accepts this on the strength of a few remarks about one site, Lumiere, and a lack of “sufficient up-to-date details” about all the other potential sites (decision letter para 23).
62. The Council considers the Inspector’s conclusion to be flawed on account of its brevity; the mistaken preference for use of the most recent information instead of information available at the time the assessment was made (above para 44); the apparent disregard of the delivery assessments included in the Council’s site schedules and in the subsequent appeal proof (Appendix 3 paras 3.34 – 3.40); and because the alleged non-viability is primarily a consequence of external economic conditions rather than deficiencies in the intrinsic quality of the sites, and is thus not a land supply problem (above para 25 et seq).
63. The final variation relates to minor differences in the **timing** of agreed capacity and is virtually a balancing item to account fully for the differences between the competing supply totals. This does not seem worth investigating further.

#### **Conclusion on land supply**

64. Estimating the 5 year land supply is not a mechanical exercise based on objective information but one that depends to a large extent on judgement and probability. The Council recognises that this makes it very difficult for an Inspector to adjudicate between competing assessments, particularly when he is unlikely to have any independent knowledge of either the market area or the sites under consideration. Nevertheless, the Council is unable to agree with the conclusions about the 5 year land supply arrived at in the Oulton appeals, for the reasons given above and thus stands by its original assessment.
65. The Inspector’s conclusions relate to the 2008-13 supply but it is obvious that he would have come to similar conclusions about the 2009-14 supply had he formally considered it. However, the Council remains convinced that the 2009-14 figures represent a reasonable estimate of the deliverable supply of land.