



REBUTTAL STATEMENT OF NEIL HOLLY MRTPI

7th January 2026

**Appeal by St Modwen Homes against refusal of planning permission for
Redevelopment of the former football pitch and tennis courts associated with the
adjacent employment use, including demolition of the existing pavilion and all
other remaining structures and enclosures relating to the previous use of the site;
and the erection of 115 dwellings, accesses, landscaping, parking, drainage
features and associated works**

Land at North of Rounds Gardens

Local Planning Authority Reference: R24/0111

The Planning Inspectorate Reference: APP/E3715/W/25/3373251

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1. Introduction

- 1.1 My name is Neil Holly. I am Development Strategy Manager at Rugby Borough Council (Hereafter known as ‘the Council’). I hold an undergraduate degree from the University of Warwick and MSc in Spatial Planning and Development from Cardiff University. I am a member of the Royal Town Planning Institute and a non-practising solicitor.
- 1.2 I have over 17 years of experience of working in town planning, first as a solicitor in private practice, then in planning consultancy and for the last approaching ten years in local government. For the past three years I have led the policy team at Rugby Borough Council.
- 1.3 The proof of evidence of Tom Smith raises issues of policy interpretation which I respond to in this rebuttal. This rebuttal should be read alongside the rebuttal proof of my colleague Ella Casey which responds to the appellant’s specific challenges to the deliverability of individual sites in the five year housing land supply.

2. The relevance of five year housing land supply to this appeal

- 2.1 For the reasons set out below and in the rebuttal proof of evidence of Ella Casey, appellant’s evidence on five-year housing land supply is not a realistic, objective assessment of the likely deliverable housing supply.
- 2.2 As detailed in the five-year housing land supply position statement (CD7.1), the current five-year land supply shortfall is a short-lived situation. It has arisen because of the operation of the NPPF means that past over-delivery under the

Local Plan 2011-2031 of 1,218 units must be disregarded in calculating the requirement for the next five years. As detailed in the position statement, were supply still being assessed under the local plan then the Council would have more than six years' supply. This is the first monitoring year in which the Council has been unable to demonstrate a five-year housing land supply since adoption of the local plan in 2019.

- 2.3 As also detailed in the position statement, the Council has a strong record of housing delivery, being in the top 10% of English local authorities for housing delivery in the last ten years and the top 5% over the last twenty years.
- 2.4 The five-year housing land supply shortfall is expected to be short-lived with a new local plan currently at Regulation 19 consultation stage and to be submitted for examination in the spring, while significant progress is being made on delivery of the South West Rugby urban extension.
- 2.6 In accordance with national policy, the benefits of delivering housing need to be given significant weight, but the long-term adverse impacts of this scheme would significantly and demonstrably outweigh its benefits in helping to close the short-term land-supply shortfall.
- 2.7 Notwithstanding that context, it is necessary for the Council to respond to the main points made in the proof of evidence of Tom Smith (CD 10.1a). In the remainder of this rebuttal statement I respond to the issues of policy interpretation raised in sections 3 and 6 of the proof of evidence of Mr Smith and in his appendices EP1 and EP3-EP6 (CD10.1b). For ease of cross-reference I utilise the same headings as are used in Mr Smith's proof.

3. What constitutes a deliverable site

- 3.1 In section 3 of this proof of evidence Mr Smith presents his interpretation of national policy and guidance on what constitutes a deliverable site.
- 3.2 Under the heading “Rugby’s approach to “clear evidence”” Mr Smith criticises the Council for not providing detailed evidence of the deliverability of individual sites. The information the Council has published to date is comprised in the five year housing land supply position statement. It is not the role of that position statement to provide the kind of detailed site-by-site discussion of deliverability that would be provided in evidence for an appeal.
- 3.3 In the remainder of his section 3 and his appendices EP1 and EP3-EP6 Mr Smith provides decontextualized snippets of or summaries of s78 appeal decisions in various parts of the country.
- 3.4 We cannot regard this discussion of appeal decisions as some kind of systematic review. Instead, it is a clearly selective survey designed to support Mr Smith’s lines of argument. But more problematically, what we are presented with are simply planning judgements about different sites in different places. We do not know the detailed circumstances of the sites discussed, nor the arguments that were heard in those appeals. Even if we did, that would not tell us how to respond to the different factual matrix in which judgments in the current appeal need to be made.
- 3.5 Appendices EP3-EP6 comprise 99 pages of material purportedly submitted by local planning authorities in other unspecified planning appeals. The relevance of this material is highly questionable.

3.6 In paragraphs 3.17-3.23 and EP1 of his proof Mr Smith seeks to derive some principles on how to approach judgements on the deliverability of sites from his review of appeal decisions. Many of these principles are anodyne and uncontentious: there must be some written evidence to show clear evidence, up-to-date evidence should be used, the value of evidence depends on its content, an application being submitted won't necessarily be clear evidence of deliverability.

3.7 However, in places Mr Smith seeks to go further. For example at para 3.20 says "The Secretary of State and Inspectors have concluded that it is simply not sufficient for Councils to provide agreement from landowners and promoters that their intention is to bring sites forward." and at para 3.22 "In some cases those Councils had provided proformas and other evidence from those promoting sites, and Inspectors and the Secretary of State found this not to be clear evidence"

3.8 Mr Smith seems to be implying here that, for sites that don't have detailed planning permission, evidence from promoters or developers will never be enough to demonstrate deliverability. But this is in direct contradiction to the Planning Practice Guidance, which states (Paragraph: 007 Reference ID: 68-007-20190722):

"Such evidence, to demonstrate deliverability [of sites allocated in a development plan or which have outline planning permission for major developer], may include:

....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;”.

- 3.9 Overall, this highlights the folly of seeking to derive generalised rules for whether a site is deliverable from s78 appeal decisions. That cannot be done, because whether the evidence presented to support deliverability of a specific site is sufficiently “clear” is a fact-sensitive planning judgement for the decision maker. Comments made in reaching that judgment in one part of the country based on the evidence presented cannot be read across to different judgments elsewhere.
- 3.10 The PPG itself doesn't seek to provide an exhaustive list of or rules about what clear evidence will need to comprise, but instead simply has a non-exhaustive list of things it “may” include.
- 3.11 In consequence, Mr Smith's discussion of and excerpts from appeal decisions elsewhere, don't move us any further forward in assessing the deliverability of the identified supply in Rugby Borough.

4. Matters not agreed – Coventry's unmet need

- 4.1 Mr Smith states in paragraph 4.10 of his proof of evidence that five-year housing land supply should be measured against housing land supply calculated using the standard method. This is a matter of common ground. It is necessary to use local housing need because Policy DS1 (Overall Development Needs) of the

Rugby Borough Local Plan 2011-2021 adopted June 2019 (CD6.1 - page 19) is deemed out of date by NPPF paragraph 78.

- 4.2 Despite this, in section 6 of his proof of evidence Mr Smith seeks to argue that the housing land supply should be reduced by 23% because, in the evidence base for Policy DS1, that is the proportion of housing need which was Coventry's unmet need.
- 4.3 This line of argument is undermined by three fundamental problems:
 - (1) it seeks to have it both ways, disapplying Policy DS1 in assessing the housing requirement but seeking to re-apply it (incorrectly) in assessing supply. In other words, it adopts a mixed approach of partly applying Policy DS1, or at least the evidence base for it, and partly applying NPPF paragraph 78;
 - (2) it is an attempt to use the s78 appeal process to create new policy, because nothing in the adopted Local Plan supports this approach;
 - (3) it confuses and conflates the parts of the NPPF that apply to plan-making with those that apply to decision-making,
- 4.4 These problems are explained in turn.
- 4.5 First, and most straightforwardly, paragraph 78 of the NPPF requires in circumstances where the plan is more than five years post-adoption, that housing land supply should be assessed against local housing need, not the adopted strategic policies. This is clear cut: the strategic policy for development needs in Policy DS1 is no longer applied in calculating five-year housing land-

supply, local housing need calculated using the standard method is applied instead.

- 4.6 In this context, there is no support for continuing to apply parts of Policy DS1 in calculating five-year housing land supply. A s78 appeal shouldn't attempt to graft parts of the evidence base for an out-of-date strategic policy onto local housing needs calculated using the standard method. Such an approach would be incoherent.
- 4.7 23% of the need that informed the housing requirement in 2011-2031 was Coventry unmet need, but 0% of local housing need calculated using the standard method against which housing land supply must now be measured is Coventry's unmet need. However, this does not mean housing delivery in the borough would be reduced. The standard method of 636 dwellings per annum is *higher* than the annualised five-year requirement under the Policy DS1 (accounting for accumulated over-delivery and a 5% buffer) of 440 dwellings per annum would be. Coventry has its own standard method requirement and its own plan currently in examination. It isn't proposed in the appellant's evidence that 23% of the borough's housing supply should now be added to Coventry's housing land supply. There is no support for cross-border redistributions of supply like this in the NPPF and this is not consistent with Coventry's City Council's own local plan or land supply position statements. This supply would simply disappear and be disregarded.

4.8 This brings us to the second fundamental problem, there is no support for the appellant's approach in Policy DS1 itself. Planning policies need to be given their ordinary meaning and s78 appeals can't be used to create new policies.

4.9 Had Policy DS1 intended to create two separate housing requirements, one for 'Rugby Borough need', and the other for 'Coventry unmet need', it would have said so. In those circumstances the borough would have, presumably, had to produce two separate five-year housing land supply calculations, one for Coventry unmet need and the other for Rugby Borough need. This would not be consistent with national policy.

4.10 Alternatively, both the plan's housing requirement and the supply would need to be reduced/discounted. The requirement would have been set at 9,600 units (borough only need) and 23% of supply would then need to be counted instead as part of the housing land supply for Coventry City Council.

4.11 The third alternative, discounting the supply by 23% without reducing the requirement by 23% would mean delivering Coventry's unmet need twice. It would mean delivering 23% more housing than is necessary to deliver the 12,400 requirement which includes Coventry unmet need.

4.12 The policy text itself supports none of these approaches and it is not the role of a s78 appeal to create new policy seven years after the plan was adopted. Neither the policy, nor the Local Plan's Appendix 2 trajectory, as Mr Smith acknowledges, divides allocations or supply into separate 'Rugby borough' and 'Coventry unmet need' categories.

4.13 The third fundamental problem is a misunderstanding and conflation of the NPPF’s plan-making and decision-taking provisions.

4.14 To understand this error, it is necessary to understand two important distinctions drawn in national policy.

4.15 The first is the distinction between statements in the NPPF which apply to plan-making and those which apply to decision-taking. The second is to understand the distinction, in the plan-making provisions, between the housing need and the housing requirement.

4.16 Beginning with the plan-making/decision-taking distinction, this is very apparent from the division of NPPF paragraph 11 into separate plan-making and decision-taking provisions, but is continued throughout the framework.

4.17 Tellingly, at paragraph 6.31, Mr Smith concedes that there is no support for his proposed approach in the PPG and Framework. Instead, he argues a “planning judgement” should be applied, by which he seems to mean creating new policy. But if we look at the NPPF, all references to accommodating unmet need from neighbouring areas appear in its plan-making rather than its decision-taking paragraphs. Those references are in paragraphs:

- 11b) (the presumption in favour of sustainable development’s meaning for plan-making),
- 27b) (“their plans should ensure that”),
- 36 (the soundness test for examining plans),

- 62 (“any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for”),
- 69 (“Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period”),
- 147 (on how Green Belt exceptional circumstances will be assessed through the examination of strategic policies).

4.18 Why are there no references to meeting unmet need from neighbouring authorities in the framework’s decision-taking policies? Our second distinction explains that. That is the distinction between housing need and housing requirement.

4.19 This distinction is clear from paragraph 69 above, plan-making authorities should establish a housing requirement which shows how much of their need and unmet need from neighbouring areas can be met. If there was any residual doubt, this need/requirement distinction is explicitly confirmed in the Planning Practice Guidance at (Paragraph: 001 Reference ID: 2a-001-20241212):

“Housing need is an unconstrained assessment of the minimum number of homes needed in an area. Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken

separately from assessing land availability, establishing a housing requirement figure and preparing policies to address this such as site allocations.”

- 4.20 Why does this distinction matter for the present appeal? It matters because the relevance of unmet need from Coventry to local plan policy DS1 was in assessing need. This was a precursor step in plan-making to determining the policy’s housing requirement. This is why the discussion of unmet need features principally in the reasoned justification to the policy, rather than the policy itself.
- 4.21 Therefore, unmet need was a relevant consideration in establishing housing need which informed the plan’s housing requirement. Once that requirement was adopted into policy it became the “housing requirement figure for [the] whole area” (to slightly paraphrase NPPF para 69) and ceased to be severable into its constituent parts.
- 4.22 It is possible to understand this further by going to a further degree of remove. The NPPF’s provisions on meeting unmet need from neighbouring authorities through plan-making are/were policy support for the legislative duty to cooperate in section 33A of the Planning and Compulsory Purchase Act 2004.
- 4.23 S33A sets a duty to co-operate in maximising the effectiveness of plan-making activities. Like the NPPF’s provisions on unmet need, it does not apply to decision-taking. Ergo, it isn’t for decision taking in s78 appeals to start apportioning unmet need between different authorities by discounting supply. That would be in fundamental contradiction to the NPPF and legislative framework for plan-making and decision-taking.

4.24 Put simply, unmet need from neighbouring authorities is relevant to determining unconstrained housing need in plan-making. Once, through the plan-making process, unconstrained housing need is converted into a housing requirement, unmet need ceases to be a relevant consideration. There is no need to start trying to partition housing supply by reference to the evidence base that led to the housing requirement, indeed, to do so would be to clearly fall into error.

4.25 I note that Mr Smith refers to appeal decisions in other local authorities where an approach ostensibly similar to that he is advocating appears to have been taken. However, those appeals are clearly distinguishable. They are about the interpretation of differently worded local plan policies in different local authority areas. Also, it cannot be assumed that the decisions reached were correct, given the incoherence of the position advocated as detailed above. Further, we cannot, as Mr Smith seems to advocate, create a new principle of national policy by reference to s78 appeal decisions. Appeal decisions are not like court judgements; they do not create precedents in that way.

4.26 Importantly, there is no past appeal decision supporting Mr Smith's interpretation of Policy DS1.

4.27 Overall, there is no support for Mr Smith's proposed approach in either the local plan policy or the NPPF. In fact, as I have explained, it would be in contradiction to both. Accordingly, no discount should be made to the supply because the housing requirement in an out-of-date 2019 local plan policy was partly arrived at through the accommodation of unmet need from Coventry.