

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEALS

APPEALS by **Reside Developments Ltd and Atherfold Investments Ltd**
against the non-determination by **Fareham Borough Council** of
(1) *"Outline application to provide up to 125 one, two, three and four-bedroom dwellings including 6 Self or Custom build plots, Community Building or Local Shop (Use Class E & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings"; and*
(2) *"Change of Use of Land from Equestrian/Paddock to Community Park Following Demolition of Existing Buildings"*
on **Land South of Funtley Road, Funtley, Fareham**

Planning Inspectorate References: APP/A1720/W/21/3283643 & 3284532

Local Authority's References: P/20/1168/OA & P/20/1166/CU

STATEMENT OF CASE OF FAREHAM BOROUGH COUNCIL

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1.0 Introduction

1.1 This Statement of Case relates to the appeals lodged by Reside Developments Ltd and Atherfold Investments Ltd ('the Appellants') to the Planning Inspectorate ('PINS') on 24th September 2021 (PINS reference APP/A1720/W/21/3283643 – 'appeal 1') and 8th October 2021 (PINS reference APP/A1720/W/21/3284532 – 'appeal 2'). The statement sets out the case for the local planning authority ('the LPA') Fareham Borough Council ('FBC' or 'the Council') in respect of the appeals which are made against the failure of the Council to determine: (1) planning application reference P/20/1168/OA; and (2) planning application reference P/20/1166/CU, both on Land south of Funtley Road, Funtley, Fareham within the prescribed time period.

1.2 The appeal 1 development is:

"Outline application to provide up to 125 one, two, three and four-bedroom dwellings including 6 Self or Custom build plots, Community Building or Local Shop (Use Class E & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings."

1.3 The appeal 2 development is:

"Change Of Use Of Land From Equestrian/Paddock To Community Park Following Demolition Of Existing Buildings."

1.4 The appeals will be determined by way of an inquiry scheduled to be heard on 8th to 17th February 2022.

1.5 Throughout this statement references made to documents appended to this statement are given the prefix "FBC".

2.0 The Appeal Sites and Surroundings

- 2.1 The appeal 1 site comprises a 6.09ha site on land to the south of Funtley Road. The site lies outside of the defined urban settlement boundary.
- 2.2 The site comprises grass land used for the grazing of horses and associated stabling and other structures, including a larger barn towards the eastern end of the site. A portion of the western part of the site is designated in the adopted local plan as an area of existing public open space and lies adjacent to The Deviation Line, a public bridleway (Bridleway 515).
- 2.3 The land rises from north to south away from the road. Alongside Funtley Road runs an established mature hedgerow, with some trees in places along that boundary. This vegetated frontage is broken at two points; firstly where the existing vehicular entrance to the site is located towards the site's eastern end on the opposite side of Funtley Road to the southern end of Stag Way (which is closed to vehicular traffic), and secondly where relatively recently in May 2020 a new gate was formed further west along Funtley Road initially to provide alternative day-to-day access into the site but currently not used for such purposes.
- 2.4 On the opposite side of Funtley Road to the north lies the existing housing development of Roebuck Avenue/Deer Leap/Stag Way which was built on the site of the former abattoir following planning permission being granted in 1997. To the west of that housing, also opposite the current appeal 1 site on the northern side of the road, lies a site where a development of 27 houses is nearing completion (planning references P/17/1135/OA, P/19/0864/RM & P/19/1185/RM). The land on the northern side of Funtley Road is not within the defined urban settlement boundary as shown on the proposals map accompanying the adopted local plan. The nearest edge of the urban settlement boundaries lies further to the east on the eastern side of the railway line.
- 2.5 The land to the south of the appeal 1 site, including Great Beamond Coppice, is subject of appeal 2. The appeal 2 site measures approximately 9.88ha in size. As with the appeal 1 site, it is located entirely outside the defined urban settlement boundary. The open land on the site comprises mainly paddocks and fields used for the keeping and grazing of horses.
- 2.6 The landform begins to notably rise above 25m contour within the appeal 1 site, and continues to rise within the appeal 2 site, to an upper height of approximately 55m AOD. This land, which occupies the higher slopes of

the hill, is also currently given over to use as paddocks. A group of larger agricultural buildings and stables is located near the highest point of the land and these buildings and the surrounding paddocks are accessed via a track which runs from the entrance to the site at Funtley Road. In November 2020 planning permission was granted for this track (planning reference P/20/0809/FP) [the decision notice is at **FBC1** and the permitted site plan at **FBC2**] which replaces the vehicular access previously provided via another track up the hill through an area of mature woodland but which is now used as a permissive path for pedestrians and cyclists (secured through the Section 106 legal agreement for the development of 27 houses on the north side of Funtley Road). The woodland the permissive path runs through (Great Beamond Coppice), within the appeal 2 site and bordering the appeal 1 site to the south-east, is designated as an Ancient Woodland Site of Importance for Nature Conservation (SINC).

- 2.7 To the south of the appeal 2 site lies the M27 motorway. The permissive path through the land leads to a bridge over the M27 providing pedestrian and cycle access to the southern side of the bridge where the urban area of Fareham lies. On the immediate south side of the bridge is a designated public footpath running east to west (Footpath 91a).
- 2.8 In landscape terms, Natural England's National Character Assessment places the appeal sites within the South Hampshire Lowlands National Character Area.
- 2.9 At a county level, the Hampshire Integrated Character Assessment places the sites on the eastern edge of the Meon Valley (3e) Landscape Character Area, which is associated with the 'Lowland Mosaic Medium Scale' Landscape Character Type.
- 2.10 At a local level, the Fareham Landscape Character Assessment places the sites within the Meon Valley (6) Landscape Character Area, associated with the 'Mixed Farmland and Woodland: Small-Scale' Landscape Type.
- 2.11 The landscape character of the sites themselves and their immediate setting are primarily influenced by two factors. The first is the landform of the small tributary valley in which they are located, the steep slopes of which lend the upper parts of the appeal 1 site and the appeal 2 site a pronounced northerly aspect and afford long views over the surrounding countryside from the upmost parts. The second is the sense of enclosure in the lower valley provided by the combination of the M27 to the south, the Deviation Line to the west and the railway to the east.

- 2.12 With regard to the inherent value of this landscape, and its treatment in policy, the appeal 2 site is proposed to be designated, along with the wider Meon Valley, as an Area of Special Landscape Quality under Policy DS3 of the emerging Local Plan, indicating that it possesses special qualities worthy of protection. The appeal 1 site is not included in the proposed designation, because it is proposed to be allocated (site HA10) for residential development (with an indicative yield of 55 dwellings). It is important to consider, however, that there is no clear delineation between the two areas, and as such the combined area of the appeal 1 and appeal 2 sites should be treated as a single landscape unit.
- 2.13 In considering whether a landscape constitutes a 'valued landscape' for the purposes of Paragraph 174(a) of the National Planning Policy Framework ('NPPF'), the most up to date and relevant guidance is Landscape Institute Technical Guidance Note 02/21: Assessing landscape value outside national designations. In particular, Table 1 of the Technical Guidance Note sets out a range of factors that can be considered when identifying landscape value, representing an evolution of the set of factors presented in Box 5.1 of Guidelines for Landscape and Visual Impact Assessment Third Edition ('GLVIA3') based on High Court judgments and practitioner experience since the original list was published.
- 2.14 The following paragraphs set out an appraisal of the landscape unit in which both appeal sites are located against the set of factors contained within Table 1. For ease of comparison, a relative score has been given for each criterion, based upon a scale of high/medium/low/not relevant.
- Natural heritage: The landscape contains Great Beamond Coppice, an area of ancient woodland and a locally designated ecological asset, and a small area of vegetation adjacent to Funtley Road is also designated. The prevailing land use is predominantly pastoral grassland surrounded by woodland areas, and it is located within a clear tributary valley landform. The natural heritage value of this landscape is therefore considered to be medium.
 - Cultural heritage: There are no designated cultural assets within this landscape, although the presence of the ancient Great Beamond Coppice and other mature trees lends it some sense of time depth. The cultural heritage value of this landscape is therefore considered to be low.
 - Landscape condition: The existing woodland that is present on the peripheries of this landscape lend it a strong sense of structure and in

particular separate it from the disturbance associated with the M27 motorway, which lies in a cutting beyond the trees. Long views can be gained from the upper valley slopes, which look over the existing settlement in the valley bottom to focal points in the wider landscape, such as Stonyfield Copse. Whilst the current use of the site is equestrian, it is largely free of those elements that often cause this use to be viewed negatively, such as scattered ramshackle structures and white tape electric fencing. The discrete valley landscape has a notable sense of character, partly engendered by the sense of arrival when passing through the railway tunnel on Funtley Road to immediately perceive the rising valley slopes. Whilst settlement activity is present, it is currently restricted to the flat valley bottom with the exception of a few scattered dwellings. The condition of this landscape is therefore considered to be high.

- Associations: There are no known cultural associations with this landscape, and therefore this factor is not considered to be relevant.
- Distinctiveness: The tributary valley in which this landscape occurs has a strong sense of place, partly due to the sense of arrival brought about by the railway lines that flank it. The vantage point provided by the permissive path at the upper valley slopes provides long views across the Meon Valley to the surrounding landscape and over Funtley to the downland beyond, with the pastoral and treed land in the foreground possessing a parkland character. The distinctiveness of this landscape is therefore considered to be high.
- Recreational: The newly created permissive path that passes from Fareham in the south to Funtley in the north enables the valley landscape to be clearly experienced from its upper parts. This path combines with the bridleway that follows the Deviation Line and other local Public Rights of Way to provide attractive circular walking opportunities for the residents of Fareham and Funtley, to enable them to appreciate the character and variation of the local countryside. The recreational value of this landscape is therefore considered to be high.
- Perceptual (scenic): The natural elements that form this landscape, including ancient woodland, mature tree groups, open pastoral grassland and long framed views come together within this discrete tributary valley to form a harmonious union, with the strong tree cover providing a sense of seasonal variation and time depth. The ridgeline to the south provides a strong sense of focus for those passing along Funtley Road, with the concave valley slopes producing an increasing gradient towards this point. Whilst modern settlement is present, it is

generally confined to the valley floor and associated with Funtley Road, with features above it to draw the eye. The perceptual (scenic) value of this landscape is therefore considered to be medium.

- Perceptual (wildness and tranquillity): The tranquillity of the valley in which this landscape is located is affected by the nearby presence of transport infrastructure, with both the railway and M27 motorway providing aural disturbance to some degree, although the M27 effects are largely limited to the upper valley slopes. The prevailing equestrian nature of the land use, as well as the presence of existing settlement activity means that this could not be considered to be a 'wild' landscape per se, although the significant presence of native trees (including ancient woodland) combines with the prevailing character to impart a degree of naturalness. The perceptual (wildness and tranquillity) value of this landscape is therefore considered to be medium.
- Functional: This landscape forms part of a substantial habitat unit and green infrastructure network that includes the wooded Deviation Line, the Meon Valley, and a large area of woodland to the north-east of Whiteley. As a steeply sloping tributary of the Meon Valley, it is part of the hydrological system of the River Meon, and the trees, woodland and pasture within the landscape form a substantial carbon sink, both within the soils and vegetation. The Functional value of this landscape is therefore considered to be high.

- 2.15 Based upon the above appraisal, it is considered that the landscape in which the appeal sites are located is a 'valued landscape' for the purposes of paragraph 174(a) of the NPPF.
- 2.16 In any case, should it be subsequently found that the sites (or either of them) are not located within a 'valued landscape', there is nonetheless an obligation under paragraph 174(b) of the NPPF to recognise the intrinsic character and beauty of the countryside, and therefore any significant landscape or visual harm arising from development activity should be a material consideration within the overall planning balance.

3.0 The Appeal Proposals

Appeal 1

- 3.1 Outline planning permission is sought for the construction of up to 125 homes comprising a mixture of one, two, three and four bed dwellings and including six self or custom build plots. Also proposed is a community building or local shop (falling within use class E & F2 respectively) and associated infrastructure, open space, landscaping and access following the demolition of the existing buildings on the site presently. All matters are reserved except for the means of access.
- 3.2 The scheme proposes to reuse and amend the existing vehicular access into the site. The submitted drawing (drawing no. 1908016-01 Rev C) shows the proposed access arrangements with a 7.86m wide carriageway at the junction with Funtley Road narrowing to 6.0m. A swept path analysis drawing (drawing no. 1908016-TK03 Rev B) shows how a standard 12m bus would be able to enter and exit the junction.
- 3.3 Matters of scale, appearance, layout and landscaping are to be reserved. However, the appellants have submitted a number of parameter plans (which would become approved documents in the event planning permission was to be granted on appeal) and an illustrative masterplan (which is for illustrative purposes only and would not be an approved plan).
- 3.4 The plans show the developable areas of the site where housing and roads would be built. There are broadly three of these areas shown on the parameter plans divided by what are referred to as "green links" with "rural edge green space" around the perimeter. The housing within the developable areas would be two storey in scale (with up to 2.5 storey key buildings) with the exception of an area along the southern edge of the development which would be limited to 1.5 storeys.
- 3.5 In terms of density, the parameter plans show three bands of descending density the further the development extends from Funtley Road – up to 40 dwellings per hectare (dph), up to 35dph and up to 25 dph. A locally equipped area of play (LEAP) would be sited close to the southern boundary of the site. The community building/local shop would be located near to the vehicular entrance from Funtley Road.
- 3.6 A pedestrian and cycle public right of way is proposed through the site from Funtley Road (north) to Thames Drive (south). The right of way would pass

through the appeal 2 site which would be secured as a new community park as part of this proposal.

Appeal 2

- 3.7 Permission is sought to change the use of the land to a community park. The application has been submitted by the same applicants (now appellants) and at the same time as the proposal for residential development of up to 125 dwellings on land between the site and Funtley Road to the north (Appeal 1). As part of that development the appellants proposed the community park be set out and provided to Fareham Borough Council as a community benefit of the appeal 1 scheme. The park would be the subject of a unilateral undertaking pursuant to Section 106 produced by the appellants as part of the appeals now lodged.
- 3.8 The proposal is near identical, except for slight reduction in site area, to one that was approved in 2018 (planning reference P/18/0066/CU).

4.0 Relevant Planning History

- 4.1 Outline planning permission was previously applied for by the same applicants (now appellants) for a development of up to 55 dwellings (including three custom-build homes, a community building incorporating a local shop and associated landscaping, infrastructure and development works). That application was considered by the Council's Planning Committee in October 2018 and a resolution to grant permission made. Planning permission was granted in September 2020 and a further Officer report was produced. The permission granted is referred to throughout the remainder of this Statement of Case as the "2020 consent".
- 4.2 The October 2018 report to the Planning Committee set out the relevant material planning considerations. At the time the Council could demonstrate a housing land supply position of 4.95 years meaning that, by virtue of not being able to demonstrate a five year housing land supply, the contingency position set out in Policy DSP40 of the adopted Fareham Borough Local Plan Part 2 was engaged.
- 4.3 In relation Policy DSP40 Officers considered four of the five tests to be met.
- 4.4 In relation to Policy DSP40(ii) the report acknowledged that the site is located beyond, and is not located adjacent to, the existing settlement policy boundary. As a result, there was a technical breach of that policy requirement. It continued by saying:

"However, a significant section of the northern boundary of the site lies on the opposite side of Funtley Road to the existing housing estate at Roebuck Avenue, Deer Leap and Stag Way. This housing estate, which was granted planning permission in the late 1990s on the site of an abattoir, is also within the countryside in terms of its status within the current adopted local plan however its character and appearance is typical of an area found within the urban settlement boundary."

- 4.5 With regards to the relative sustainability of the site in terms of access to local services and facilities by sustainable modes of transport, the report had the following to say:

"Bus stops are located close to the site on Funtley Road and the bus service runs approximately once an hour to Fareham and Wickham. However, the service neither starts particularly early nor finishes late and no buses run on a Sunday. There are very limited services within Funtley itself. The closest shop (McColls Newsagent) in Kiln Road for

example is in the region of 1,200 metres (3/4 mile) from the site. Furthermore, Officers are not convinced that the pedestrian and cycling arrangements from the application site to facilities are ideal at present either in the vicinity of the site itself or taking into account the steep climb up from Funtley into Fareham. [In the subsequent final Officer report dated September 2020 it was observed that the bus service had since been re-routed so it does not pass through Funtley village].

The proposed pedestrian and cycle right of way through the site southwards and over the M27 motorway bridge represents a substantial improvement to the accessibility of the site by providing sustainable transport links through to the existing urban area of Fareham. This new link brings Orchard Lea Infant and Junior Schools within a walking/cycling distance of approximately 650 metres from the application site and the shops and other services at Highlands Road Local Centre within 1.5km. Through the submitted travel plan the applicant proposes contributions towards the cost of new bikes for new residents to facilitate the use of this new pedestrian/cycle connection with Fareham. Bus vouchers are also proposed as part of that same scheme.

It should also be noted that part of the development proposed by the applicant comprises space for a shop and community building on the site itself meaning such facilities would be within a very short distance relatively speaking from those new homes being constructed. Officers acknowledge that the provision of a commercial enterprise such as a shop, cafe or other such use is dependent on market forces and a suitable and viable end use coming forward. Notwithstanding, the provision of space for such assists in increasing the relative accessibility of the site as would the provision of a community building subject to that facility being in a form which responded to local need."

- 4.6 Officers considered the package of measures proposed by the applicants in relation to that first application materially improved the sustainability of the location. In particular the proposed public right of way for pedestrians and cyclists to be formed through the site and over the M27 bridge to the urban area of Fareham was considered to be an essential element of the proposal delivering sustainable transport links to make the development acceptable in planning terms.

- 4.7 With regards to Policy DSP40(iii) the Officer report read:

"Development on the site would have significant detrimental effects on the character and quality of local views. The eastern part of the site is enclosed by strong hedgerows and tree cover and is less visible from Funtley Road. However, the land further west is more open and built development on this land will be clearly evident thereby affecting

the integrity and quality of the rural character of the surrounding landscape."

- 4.8 The report continues to explain that the applicant had sought to minimise the adverse impacts of the development in their proposals in a number of ways.

"The masterplan as well as the submitted parameter plan show two 'green' or 'view' corridors through the site. These corridors have been devised following the advice of the Council's Urban Designer that the importance of the high ground and its relationship back to the development core and Funtley Road, linking with the existing housing development on the north side of the road, is a key element. The corridors act to integrate key landscape features of the community park land to the south and reduces the urbanising impact on the rural character of the area.

In comparison with the existing built form, namely the housing estate on the site of the former abattoir on the north side of Funtley Road, Officers consider the proposal compares favourably. The proposed development would provide up to 55 dwellings on a site which the revised parameters plan identifies as having a developable area of 2.48 hectares. The overall density of the scheme is therefore approximately 22 dwellings per hectare (dph). This is lower than the density of the existing housing development at Roebuck Avenue/Deer Leap/Stag Way which is around 28 - 32 dph.

Whilst matters of scale, appearance, layout and landscaping are all reserved matters, Officers consider the quantum proposed and the parameters set out in the submission mean the proposed development would be capable of being sensitively designed to respond positively to the character of the existing housing development nearby. The work carried out by the applicant in setting the parameters for development on the site, particularly the incorporation of key 'green' or 'view' corridors through the land, acts to minimise the adverse impact on the landscape character of the countryside."

- 4.9 The report concluded by carrying out the 'planning balance' and commented as follows:

"The site is not located adjacent to the existing urban area as identified in the adopted local plan and its location has been found by Officers to be relatively poor in terms of its accessibility. However, the proposed improvements to sustainable transport links to service the site and surrounding area are a substantial improvement which Officers consider satisfactorily address the issue of accessibility.

Taking into account the parameters indicated by the applicant and the site's constraints, the quantum of development proposed would be capable of being delivered at a scale and density which responds well to the adjacent existing built up area. Measures have been proposed to mitigate the visual impact of the development, notwithstanding, the proposal would harm the landscape character, appearance and function of the countryside."

- 4.10 It was found that the proposal accorded with four of the five criteria in Policy DSP40. Officers considered that, on balance, when considered against the development plan as a whole, the scheme should be approved. The Committee Report is at **FBC3** and the minutes at **FBC4**.
- 4.11 As noted in section 3 above, on 12 October 2018, the Council granted permission for a proposal nearly identical, except for comprising a slightly larger site area, to the appeal 2 proposal (planning reference P/18/0066/CU).

5.0 Background to the Appeals and putative reasons for refusal

- 5.1 As noted in section 4 above, the 2020 consent for a 55 dwelling scheme was granted in September 2020.
- 5.2 A further application, now the subject of appeal 1, was made by the appellants in November 2019 (LPA reference P/20/1168/OA). An appeal (this appeal) was lodged on 24th September 2021, and on 2nd November 2021 the Planning Committee considered a report in which Officers recommended the application be refused (**FBC5**). Members resolved that planning permission would have been refused had there still been the opportunity to determine the proposal (as the minutes of the 22nd November 2021 Planning Committee meeting at **FBC6** show).
- 5.3 It was RESOLVED that, subject to final comments being received from the highway authority (Hampshire County Council) and authority being delegated to the Head of Development Management to include any additional submissions to the Planning Inspector considered appropriate taking into account those comments, and had members been able to determine the planning application, they would have resolved to REFUSE PLANNING PERMISSION for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17, CS18, CS20 and CS21 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 130 and 174 of the NPPF and is unacceptable in that:

a) The proposed development is not sensitively designed to reflect the character of the neighbouring settlement of Funtley and fails to respond positively to and be respectful of the key characteristics of the area harmful to the character and appearance of the countryside;

b) The proposal would not be sustainably located;

c) The proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation;

d) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with

other developments, would arise due to the impacts of recreational disturbance;

e) In the absence of a legal agreement to secure the provision of open space and facilities and contributions toward the associated management and maintenance, the recreational needs of residents of the proposed development would not be met;

f) In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;

g) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;

h) In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and the provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are in place to assist in reducing the dependency on the use of the private motorcar.

5.4 An Informative was also included within the resolution which states:

Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points e) - i) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.

5.5 On 22 November 2021, Aaron Wright of Turleys [the appellants' agent] sent an email to Alison Dyson [the case officer at PINS] which was copied to Richard Wright [case officer at FBC] in respect of nitrate mitigation. This email and the documents enclosed with it [**FBC7**] confirmed that the appellants had purchased nitrate credits of 39.04 kgN per year from Wanford Estate.

5.6 Richard Wright replied to this email as follows:

The information is presented in a form that has previously been agreed between the Warnford Estate, FBC and SDNPA and it shows that a contract has been entered into by the Appellant to purchase 39.04 kg/N/yr nitrate credits. This would match the sum indicated by the Council in the report to the Planning Committee as the required amount of mitigation. I would suggest this information could be

submitted with the Appellant's Statement of Case but I am grateful for advance sight of this which will enable the Council to clarify its own Statement of Case that reason for refusal (c) has been addressed – thank you.

- 5.7 As set out by Richard Wright, the LPA now consider that refusal reason (c) has been addressed.
- 5.8 The final application is P/20/1166/CU for "*Change Of Use Of Land From Equestrian/Paddock To Community Park Following Demolition Of Existing Buildings*". An appeal (appeal 2) was lodged on 8th October 2021, and on 2nd November 2021 the Planning Committee considered a report [**FBC8**] in which Officers recommended that had the Council been able to determine the application it would be permitted.
- 5.9 The Committee RESOLVED that, had members been able to determine the planning application, they would have GRANTED PLANNING PERMISSION, subject to the conditions in the report. On this basis the LPA do not intend offering any evidence on Appeal 2 (save as necessary in connection with Appeal 1) and this Statement of Case concentrates on Appeal 1, the outline housing scheme. Minutes are attached at **FBC9**.

6.0 Relevant Planning Policy

Local Planning Policy

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011

6.1 Policy CS2 – Housing Provision states:

"3,729 dwellings will be provided within the Borough to meet the South Hampshire sub-regional strategy housing target between 2006 and 2026, excluding the SDA. Priority will be given to the reuse of previously developed land within the existing urban area.

Housing will be provided through;

- Completions between April 2006 and March 2010 (1,637 units);*
- Sites that already have planning permission (1,434 units);*
- Dwellings on previously developed land;*
- Sites allocated in earlier local plans;*
- The Strategic Development Allocation at the former Coldeast Hospital;*
- The Strategic Development Location at Fareham Town Centre;*
- and*
- New allocations and redesignations to be identified through the Site Allocations and Development Management DPD.*

The supply of sites will be kept up-to-date through a regular review of the Strategic Housing Land Availability Assessment which will identify sites. Those that are allocated will be done so through the Site Allocations and Development Management Development Plan Document. The Annual Monitoring Report will inform the pace of housing delivery and update the housing trajectory. Development will achieve a mix of different housing sizes, types and tenures informed by the Housing Market Assessment and the Council's Housing Strategy."

6.2 Policy CS4 – Green Infrastructure, Biodiversity and Geological Conservation covers a range of related planning issues concerning habitats, nature conservation sites and green infrastructure. The relevant part of the policy reads as follows:

"Green Infrastructure will be created and safeguarded through:

- *Investing in appropriate management, enhancement and restoration, and the creation of new resources including parks, woodland and trees, and wildlife habitats;*
- *Not permitting development that compromises its integrity and therefore that of the overall green infrastructure framework”.*

6.3 Policy CS5 – Transport Strategy and Infrastructure states (relevant extracts only):

“The Council will, where necessary, work with the Local Highways Authority, Highways Agency and transport operators to promote, permit, develop and/or safeguard a high quality and sustainable integrated transport system for the Borough. This will include the following measures:

...

3. The Council will permit development which:

- *contributes towards and/or provides necessary and appropriate transport infrastructure including reduce and manage measures and traffic management measures in a timely way;*
- *does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes;*
- *is designed and implemented to prioritise and encourage safe and reliable journey's by walking, cycling and public transport.”*

6.4 Policy CS6 – The Development Strategy states:

“Development will be focused in:

- *Fareham (Policy CS7), the Western Wards & Whiteley (Policy CS9), Portchester, Stubbington & Hill Head and Titchfield (Policy CS11);*
- *Land at the Strategic Development Locations to the North of Fareham (Policy CS13) and Fareham Town Centre; (Policy CS8);*
- *Land at the Strategic Development Allocations at the former Coldeast Hospital (Policy CS10) and Daedalus Airfield (Policy CS12).*

In identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries including their review through the Site Allocations and Development

Management DPD, taking into consideration biodiversity / potential community value, the character, the accessibility, infrastructure and services of the settlement and impacts on both the historic and natural environment. Opportunities will be taken to achieve environmental enhancement where possible.”

6.5 Policy CS14 – Development Outside Settlements states:

"Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agricultural, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible. In coastal locations, development should not have an adverse impact on the special character of the coast when viewed from the land or water."

6.6 Policy CS15 – Sustainable Development and Climate Change states:

"The Borough Council will promote and secure sustainable development by directing development to locations with sustainable transport options, access to local services, where there is a minimum negative impact on the environment or opportunities for environmental enhancement. Development must not prejudice the development of a larger site.

This will be achieved by:

- Ensuring that the scale and density of the proposal makes an efficient use of land. With a minimum of 60dph within areas with high multi-modal transport accessibility and good access to a range of social, environmental and economic infrastructure, taking account of the character of the location.*
- Seeking to achieve the following timescale and levels for the Code for Sustainable Homes and the equivalent for non residential development unless it can be demonstrated to be unviable:*
- Ensuring that there is sufficient capacity available, or will be made available, in existing infrastructure to meet the needs of the new development including adequate land and funding for waste management.*
- Avoiding unacceptable levels of flood risk and proactively managing surface water through the promotion of sustainable drainage techniques."*

6.7 Policy CS16 – Natural Resources and Energy states:

"New development will be expected to safeguard the use of natural resources by:

- Demonstrating the latest best practice for energy efficiency, passive solar design and water conservation in the construction and use of the buildings;*

- *Taking measures to reduce carbon emissions, pollution and waste during the construction and operation of new developments through orientation, layout, design and material selection;*
- *Reducing, reusing and recycling waste on-site;*
- *Preventing the loss of the best and most versatile agricultural land (Grades 1, 2 or 3a of the Natural England Agricultural Land Classifications System);*
- *Protecting mineral resources from permanent development, without first allowing for extraction, which would lead to the sterilisation of the deposit.*

Development (1 dwelling or more and 500m² or more of non-residential floorspace) will be encouraged to contribute to the Fareham target of 12MW of renewable energy by 2020. Major developments (250 dwellings or more or 5,000 sq.m or more of non-residential floorspace) should aim to maximise onsite renewable energy production and resource efficiency. In such cases, the extent of contribution should be demonstrated, taking account of viability. The generation of energy from renewable or low carbon sources will be permitted unless there are judged to be unacceptable social, environmental or economic impacts."

6.8 Policy CS17 – High Quality Design states in part:

"All development, buildings and spaces will be of a high quality of design and be safe and easily accessed by all members of the community. Proposals will need to demonstrate adherence to the principles of urban design and sustainability to help create quality places. In particular development will be designed to:

- *respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials,*
- *provide continuity of built form, a sense of enclosure with active frontages to the street and safety of the public realm,*
- *ensure permeable movement patterns and connections to local services, community facilities, jobs and shops,*
- *create a sense of identity and distinctiveness and one that is legible,*
- *enable and/or encourage a mix of uses and diversity in an area,*
- *ensure that the public realm has pedestrian priority, is safe, secure, functional and accessible, and is constructed of quality materials and well maintained,*
- *enable buildings to provide flexible accommodation, which can be adapted to suit all members of a community throughout their lifetime,*

- provide green infrastructure, including landscaping, open spaces, greenways and trees within the public realm, and
- provide appropriate parking for intended uses taking account of the accessibility and context of a development and tackling climate change.

In addition new housing will be required to:

- secure adequate internal and external space, dwelling mix, privacy, and sunlight and daylight to meet the requirements of future occupiers.”

6.9 Policy CS18 – Provision of Affordable Housing states:

“The Council will require the provision of affordable housing on all schemes that can deliver a net gain of 5 or more dwellings.

- *On sites that can accommodate between 5 and 9 dwellings developers will be expected to provide 30% affordable units OR the equivalent financial contribution towards off-site provision.*
- *On sites that can accommodate between 10 and 14 dwellings developers will be expected to provide 30% affordable units.*
- *On sites that can accommodate 15 or more dwellings developers will be expected to provide 40% affordable units.*

Development proposals will be required to provide a mixture of dwelling types, sizes and tenures reflecting the identified housing needs of the local population.

Where development viability is an issue, developers will be expected to produce a financial assessment in which it is clearly demonstrated the maximum number of affordable dwellings which can be achieved on the site.

Should a site fall below the above identified thresholds but is demonstrably part of a potentially larger developable site, the Council will seek to achieve affordable housing on a pro rata basis.

The level of affordable housing provision will also be subject to other planning objectives to be met from the development of the site.”

6.10 Policy CS20 – Infrastructure and Development Contributions states:

“Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider. Contributions or provision may also be required to mitigate the impact of development

upon infrastructure. Detailed guidance on provision or contributions is or will be set out in Supplementary Planning Document(s) including any standard charges introduced through the Community Infrastructure Levy.

Provision or financial contributions will be required to include arrangements for on-going maintenance where necessary and appropriate.

Phasing of development will be related to the provision of infrastructure. Consideration will be given to pooling of contributions towards the cost of facilities."

6.11 Policy CS21 – Protection and Provision of Open Space states:

"The Borough Council will safeguard and enhance existing open spaces and establish networks of Green Infrastructure to add value to their wildlife and recreational functions. Development which would result in the loss of or reduce the recreational value of open space, including public and private playing fields, allotments and informal open space will not be permitted, unless it is of poor quality, under-used, or has low potential for open space and a better quality replacement site is provided which is equivalent in terms of accessibility and size.

Proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided as follows:

- *Parks and Amenity Open Space 1.5 ha / 1,000 population*
- *Outdoor Sport – 1.2 ha / 1,000 population*
- *Children's Play Equipment – 14 pieces of equipment per 1,000 1-12 year olds*
- *Youth Facilities – 1 youth facility/MUGA per settlement area*

In addition to these types of open spaces, where existing provision is insufficient to provide for the additional population, the Borough Council will seek the provision of accessible greenspace which meets the standards set out in the South East Green Infrastructure Framework including Accessible Natural Green Space standards."

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6.12 Policy DSP1 – Sustainable Development states:

"When considering development proposals, the Council will take a positive approach that reflects the "presumption in favour of sustainable development" contained in the National Planning Policy Framework. It will always work proactively with applicants to find solutions that enable proposals to be granted permission wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application, or where relevant policies are out-of-date at the time of making the decision, the Council will grant permission, unless material considerations indicate otherwise. This will include taking into account whether or not:

- i. the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; and/or*
- ii. specific policies in the National Planning Policy Framework indicate that development will not be supported."*

6.13 Policy DSP6 – New Residential Development Outside of the Defined Urban Settlement Boundaries states:

"There will be a presumption against new residential development outside of the defined urban settlement boundaries (as identified on the Policies Map). New residential development will be permitted in instances where one or more of the following apply:

- i. It has been demonstrated that there is an essential need for a rural worker to live permanently at or near his/her place of work; or*
- ii. It involves a conversion of an existing non-residential building where;*
 - a) the buildings proposed for conversion are of permanent and substantial construction and do not require major or complete reconstruction; and*
 - b) evidence has been provided to demonstrate that no other suitable alternative uses can be found and conversion would lead to an enhancement to the building's immediate setting. iii. It comprises one or two new dwellings which infill an existing and continuous built-up residential frontage, where:*

- a) *The new dwellings and plots are consistent in terms of size and character to the adjoining properties and would not harm the character of the area; and*
- b) *It does not result in the extension of an existing frontage or the consolidation of an isolated group of dwellings; and*
- c) *It does not involve the siting of dwellings at the rear of the new or existing dwellings.*

A change of use of land outside of the defined urban settlement boundary to residential garden will only be permitted where:

- i. *It is in keeping with the character, scale and appearance of the surrounding area; and*
- ii. *It will not detract from the existing landscape; and*
- iii. *It respects views into and out of the site.*

New buildings should be well-designed to respect the character of the area and, where possible, should be grouped with existing buildings.

Proposals should have particular regard to the requirements of Core Strategy

Policy CS14: Development Outside Settlements, and Core Strategy Policy

CS6: The Development Strategy. They should avoid the loss of significant trees, should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts, or detrimental impact on the character or landscape of the surrounding area."

6.14 Policy DSP13 – Nature Conservation states:

"Development may be permitted where it can be demonstrated that;

- i. *designated sites and sites of nature conservation value are protected and where appropriate enhanced;*
- ii. *protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;*
- iii. *where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and*
- iv. *The proposal would not prejudice or result in the fragmentation of the biodiversity network.*

Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that (this section of

the policy should not be applied to impacts on SPA designated sites which are subject to stricter protection tests as set out in The Conservation of Species and Habitats Regulations (as amended) 2010);

- i. Impacts are outweighed by the need for, and benefits of, the development; and*
- ii. Adverse impacts can be minimised and provision is made for mitigation and, where necessary, compensation for those impacts is provided.*

Enhancements that contribute to local habitat restoration and creation initiatives as set out in the Hampshire Biodiversity Action Plan (or other similar relevant document) will be supported."

6.15 Policy DSP15 – Recreational Disturbance on the Solent Protection Areas states:

"In Combination Effects on SPA

Planning permission for proposals resulting in a net increase in residential units may be permitted where 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. In the absence of a financial contribution toward mitigation, an Appropriate Assessment will be required to demonstrate that any 'in combination' negative effects can either be avoided or satisfactorily mitigated through a developer provided package of measures.

Direct Effects on Special Protection Areas

Any application for development that is of a scale, or in a location, such that it is likely to have a direct effect on a European-designated site, will be required to undergo an individual Appropriate Assessment. This may result in the need for additional site-specific avoidance and/or mitigation measures to be maintained in perpetuity. Where proposals will result in an adverse effect on the integrity of any Special Protection Areas, planning permission will be refused."

6.16 Policy DSP40 – Housing Allocations states:

"The sites set out in Appendix C, Table 8 and shown on the Policies Map are allocated for residential development and should be developed in line with the principles set out in their respective Development Site Briefs.

Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site listed in Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.

All sites listed in Appendix C will be safeguarded from any other form of permanent development that would prejudice their future uses as housing sites to ensure that they are available for implementation during the plan period.

Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

- i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. It can be demonstrated that the proposal is deliverable in the short term; and*
- v. The proposal would not have any unacceptable environmental, amenity or traffic implications."*

Emerging Local Plan 2037

- 6.17 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 6.18 On 2nd October 2020 the Council approved a publication version of its emerging Local Plan under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and a six-week period of public consultation took place between 6th November and 18th December 2020. The emerging Local Plan was then revised in the light of changes to the Planning Practice Guidance. On 10th June 2021 the Council approved a revised version of the emerging Local Plan **(FBC.10)**

for publication under Regulation 19. The consultation opened ran for six weeks from 18th June 2021 until 30th July 2021.

- 6.19 It is relevant to note at this stage that Natural England objected to the Revised Local Plan on the basis of the detrimental impact that new housing sites could have on the New Forest SPA/SAC/Ramsar. Their letter is attached at **FBC11**.
- 6.20 The Council submitted the Regulation 22 Fareham Local Plan 2037 and supporting documents to the Secretary of State for independent examination on 30th September 2021.
- 6.21 The Council's current Local Development Scheme (LDS) (**FBC12**) was adopted in June 2021. The Council has met the timetable for submission for independent examination (Autumn 2021). Under the LDS, the emerging Local Plan is expected to be subject to independent examination in Winter/ Spring 2021/ 2022 (Regulation 24) and adopted in Autumn/ Winter 2022 (Regulation 26). The LPA therefore consider that some weight can be attached to the emerging plan.
- 6.22 The Appeal Sites are within the countryside and Strategic Gap in the emerging Local Plan, as well as being within the Area of Special Landscape Quality designation, save for the area covered by the proposed HA10 allocation which would be within the built up boundary. Chapter 3 of the Plan sets out the Council's Development Strategy with policies DS1 and DS3 being of direct relevance. These policies are also confirmed in the Plan to be strategic policies to address the priorities for the development and use of land in the Borough.
- 6.23 **Policy DS1 (Development in the Countryside)** is a countryside restraint policy setting out those circumstances in which new development will be permitted in the countryside. In addition, it sets out a number of requirements that acceptable development will have to demonstrate and these include:
- i) Require a location outside of the urban area, and*
 - j) Conserve and enhance landscapes, sites of biodiversity or geological value and soils, and*
 - k) Recognise the intrinsic character and beauty of the countryside*
- 6.24 **Policy DS3** relates to Landscape with paragraph 3.50 of the supporting text referring to two recent housing appeal decisions, stating:

"Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions

were on sites located in the Lower Meon Valley (Land west of Old Street, Stubbington APP/A1720/W/18/3200409 and Land east of Posbrook Lane, Titchfield APP/A1720/W/18/3199119) and the Inspectors recognised the high-quality landscape concluding that the Lower Meon is a valued landscape."

- 6.25 In this regard, those parts of the Appeal Sites beyond the HA10 allocation are designated as an Area of Special Landscape Quality on the Policies Map. **Policy DS3 (Landscape)** states:

"Areas of Special Landscape Quality have been identified in the Borough and are shown on the Policies map. Development proposals shall only be permitted in these areas where the landscape will be protected and enhanced. Development in the countryside shall recognise the intrinsic character and beauty of the countryside, paying particular regard to:

- a) Intrinsic landscape character, quality and important features; b) Visual setting, including to/from key views;*
- c) The landscape as a setting for settlements, including important views to, across, within and out of settlements;*
- d) The landscape's role as part of the existing Local Ecological network;*
- e) The local character and setting of buildings and settlements, including their historic significance;*
- f) Natural landscape features, such as trees, ancient woodland, hedgerows, water features and their function as ecological networks; and*
- g) The character of the Borough's rivers and coastline, which should be safeguarded.*

Major development proposals must include a comprehensive landscaping mitigation and enhancement scheme to ensure that the development is able to successfully integrate with the landscape and surroundings. The landscaping scheme shall be proportionate to the scale and nature of the development proposed and shall be in accordance with the enhancement opportunities specified in the Council's Landscape Sensitivity Assessment."

- 6.26 Chapter 4 deals with Housing Need and Supply with Table 4.1 indicating a Total Housing Requirement to 2037 of 9,556 dwellings. Table 4.2 sets out the supply, based current and proposed allocations along with outstanding permissions. These indicate a supply of 10,594, thus providing a contingency provision of 1,038 dwellings.

- 6.27 **Policy H1 (Housing Provision)** makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources including 55 new homes from the appeal site.
- 6.28 **Policy HP1 (New Residential Development)** states that residential development in locations outside of the Urban Area boundary [ie beyond the HA10 allocation] will be permitted where one of two factors (neither of which apply in this case) applies.
- 6.29 **Policy HP4 (Five-Year Housing Land Supply)** applies where the Council cannot demonstrate a five-year supply of land for housing and broadly mirrors the wording of LPP2 Policy DSP40.
- 6.30 **Policy HP5 (Provision for Affordable Housing)** states that, on greenfield sites that can accommodate 10 or more dwellings or with an area of 0.5ha or more, developers will be expected to provide 40% affordable units.
- 6.31 **Policy NE1 (Protection of Nature Conservation, Biodiversity and the Local Ecological Network)** states that development will be permitted where, among other things, designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations.
- 6.32 **Policy NE3 (Recreational Disturbance on the Solent Special Protection Areas (SPAs))** requires mitigation of recreational impacts of development on the Solent SPAs.
- 6.33 **Policy NE4 (Water Quality Effects on the Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites of the Solent)** states that planning permission will be granted where the integrity of the designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.
- 6.34 **Policy NE10 (Protection and Provision of Open Space)** requires residential development to provide open and play space to meet the needs of new residents.
- 6.35 **Policy TIN4 (Infrastructure Delivery)** requires provision of and contribution towards the delivery of new or improved infrastructure, or other mitigation, to mitigate the impacts of development.

- 6.36 Chapter 11 deals with Design with the supporting text to **Policy D1 (High Quality Design and Placemaking)** noting at paragraph 11.3 that:

"The NPPF, as supported by Planning Practice Guidance (PPG), and the National Design Guidance (NDG) and the National Model Design Code (NMDC), states that that the design quality of new development is more than just the appearance, form, materials and detail of buildings. It includes the arrangement of buildings within a layout, how close together they are, the spaces in between buildings, the views and vistas they create, landscape and planting, biodiversity, other uses and activities, the richness of users' experience both visual and rural, and how they connect with existing and proposed essential services and facilities."

- 6.37 Paragraph 11.8 makes clear that a well-designed, contextual development demonstrates that it is:

- *based on a sound understanding of the features of the site and the surrounding context, that should include those identified above; and*
- *integrated into their surroundings so it relates well to them; and*
- *influenced by and influence their context positively; and*
- *responsive to local history, culture and heritage*

- 6.38 **Policy D1** itself states:

"Development proposals and spaces will be of high quality, based on the principles of urban design and sustainability to ensure the creation of quality places.

Development proposals will be permitted where compliance with the following key characteristics of high quality design, as set out in paragraphs 11.5-11.27, has been demonstrated:

- i. Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and*
- ii. Identity - where proposals create places that are attractive, memorable, distinctive and of strong character; and*
- iii. Built form - where proposals create a three-dimensional pattern or arrangement and scale of development blocks, streets, buildings and open spaces, that are coherent, attractive and walkable; and*
- iv. Movement - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity; and*

- v. *Nature - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure; and*
- vi. *Public spaces - where proposals create public spaces that are attractive, safe, accessible and provide a focus for social interaction, and promote healthy activity and well-being; and*
- vii. *Uses - where proposals provide or are well related and connected with, a mix of uses that provide the day to day needs of users; and*
- viii. *Homes and buildings - where proposals provide a variety of dwelling sizes and tenures, have sufficient space and are well related to public space; and*
- ix. *Resources - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste; and*
- x. *Lifespan - where proposals are designed and constructed to create enduring high-quality buildings, spaces and places that are attractive and functional, which weather well and can be adapted to users' needs with efficient management and maintenance."*

6.39 In terms of how this policy works, paragraph 11.28 states:

"The quality of buildings, spaces and places will be assessed at all scales and having regard to all users. Quality design will be at the heart of the Council's decisions, from the location of new development at a strategic level through to the design and appearance of buildings and spaces, their details, landscaping and how they are to be managed and maintained for the long term."

6.40 The **draft allocation (HA10)** [see **FBC13**] relates to the extant outline permission for 55 homes and indicates an indicative yield of 55 dwellings. The draft allocation sets out a series of site-specific requirements and the following are considered directly relevant to the main issues in this appeal:

- a) The quantum of housing proposed should be broadly consistent with the indicative site capacity; and*
- b) Primary highway access should be from Funtley Road; and*
- c) Building heights are limited to a maximum of 2 storeys; and*
- d) Safe pedestrian and cycle crossing points across Funtley Road and connectivity with the existing footpath/bridleway network in the vicinity of the site and eastwards towards the centre of Funtley village in order to maximising connectivity to nearby facilities and services; and*
- e) The creation of a vehicular loop road on the site, allowing for pedestrian and cycle permeability across the site; and*
- f) Proposals shall take account of the site's landscape context by incorporating view corridors from Funtley Road through to the public*

open space allocation to the south of the residential allocation. The view corridors should form part of the on-site open space and should incorporate pedestrian and cycle links, whilst vehicular crossing of links should be limited; and

g) The existing woodland on-site shall be retained and incorporated within the design and layout of proposals in a manner that does not impact on living conditions or prevent damage to any nearby dwellings, roads, footpaths or other infrastructure; and

h) A landscape buffer shall be incorporated between development and the Great Beamond Coppice SINC to the east of the site; and

i) The provision of a building/ buildings for community uses, located in an accessible location to enable a range of uses for both existing and new residents; and

j) The site is identified as a mineral safeguarded site (brick clay is likely to underlay site). A Minerals Assessment will be required prior to any development in accordance with the Hampshire Minerals and Waste Plan (2013); and

k) Infrastructure provision and contributions including but not limited to health, education and transport shall be provided in line with Policy TIN4 and NE3.

National Planning Policy Framework (2021)

6.41 The NPPF is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely planned (paragraph 15).

6.42 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. It states, so far as material:

Plans and decisions should apply a presumption in favour of sustainable development.

...

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 6.43 Footnote 7 states that the policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.
- 6.44 Footnote 8 states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 6.45 National policy on design has been substantially strengthened in the revised Framework. Chapter 12 of the Framework. "*Achieving well-designed places*" has been significantly revised.
- 6.46 The overarching social objective of the planning system now has "*beautiful*" added to the previous requirement to provide "*a well-designed, [beautiful] and safe built environment*". There is no definition of "beautiful", which is necessarily context specific.
- 6.47 In respect of valued landscapes paragraph 174 of the Framework makes clear that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes [174a]. Paragraph 174 also requires decisions to recognise the intrinsic character and beauty of the countryside, including inter alia, the economic and other benefits of the best and most versatile agricultural land [174b].
- 6.48 Paragraph 174a also requires decisions to protect and enhance sites of biodiversity value and further provision is made on this issue in paragraphs 179 to 181. Paragraph 182 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

7.0 Weight to be afforded to adopted Local Plan policies

Housing Land Supply

- 7.1 At the time of submitting this statement the Council's most recently published housing land supply is the Five Year Housing Land Supply (5YHLS) Position Paper that which was reported to the Council's Planning Committee on 17th February 2021 (provided as **FBC14**). The position paper identifies that the Council can currently demonstrate a housing land supply of 4.2 years based on applying a 20% buffer and an identified need using the standard method of 508 dwellings per annum.
- 7.2 The Appellants, in their Statement of Case, do not set out what their precise position is on the 5YHLS but instead at 4.11 and 4.12 draw on the findings of the Inspector in the Newgate Lane East appeal decision letter and refer to paragraph 45 where the inspector noted that:
- "FBC cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, FBC and the appellant agree that supply lies in the range of 0.95 to 3.57 years. Although it seems likely to be lower based on the evidence before me, I have used FBC's figure of 3.57 years as a benchmark to assist in making my decision. On that basis, the fact that the appeals development would be at odds with the area's strategy for the location of new housing and conflict, in that regard, with the development plan, including with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6, currently carries limited weight."*
- 7.3 It therefore appears to be common ground between the parties that at this present moment in time the Council cannot demonstrate a five year supply of housing land against its requirement. It is also common ground that the shortfall is material.
- 7.4 At the Planning Committee in January 2022 a report will be considered in respect of Housing Land Supply figures for the period 1st January 2022 to 31st December 2026. This new position paper will then form the basis for the Council's position on five year housing land supply for this appeal and evidence will refer to this

Weight to be given to out-of-date policies

- 7.5 Paragraph 74 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.
- 7.6 In the absence of a five-year supply of deliverable housing sites, the Council considers that policy DSP40 is the principal development plan policy that guides whether schemes will be considered acceptable.
- 7.7 In such circumstances, where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, the fact that the proposal is in breach of policy DSP40 must be given very significant weight in the planning balance. This is because the fact that policy DSP40 is breached puts the development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37 (**FBC15**) ("*Suffolk Coastal*") at [21] the Framework:

"...cannot and does not purport to displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme."

- 7.8 The following paragraphs give various examples of how previous Inspectors have afforded weight to local plan policies which are considered out-of-date. All of the appeals referred to are in Fareham Borough.

Land east of Down End Road, Portchester (**FBC16**) (5 November 2019)

- 7.9 There was difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). At paragraph 90, Inspector Gould errs on the side of caution and considers the Appellant's figure better represents the current situation, however, notwithstanding this fact, he concludes at paragraph 97 that "great weight" should be

attached to the conflict with Policy DSP40 and CS5 and the development plan.

- 7.10 Whether or not the tilted balance is engaged does not determine the weight to be given to policies (whether they be out of date or not) which remains a matter of planning judgment for the decision maker. This was made clear by both the Court of Appeal and the Supreme Court in *Suffolk Coastal* (see for example Lord Carnwath at paragraphs [54]-[56]). The fact that the most important policies for determining the application (including DSP40) are rendered out of date by virtue of a lack of housing land supply simply triggers paragraph 11(d). This factor has no bearing on whether DSP40 should be given reduced weight.
- 7.11 In this appeal the tilted balance was engaged. At paragraph 100 Inspector Gould concludes that that the adverse impacts of the granting planning permission would significantly and demonstrably outweigh the benefits as a whole - a decision he has reached having applied the tilted balance set out in NPFF paragraph 11(d)(ii).

Appeal for 150 dwellings at Land East of Posbrook Lane (**FBC17**) (April 2019)

- 7.12 In this Appeal Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. Inspector Stone also determined that because of the lack of a 5YHLS policies to protect the countryside such as CS14, 22 and DSP6 did not have full weight rather they had significant weight. In respect of Policy DSP40, however, he concluded at Paragraph 68 that:

"...The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight."

Land West of Old Street, Stubbington (**FBC18**) (January 2019)

- 7.13 In the case of the Land West of Old Street, Stubbington (PINS reference APP/A1720/W/18/3200409), as with the previous appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial. At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which

was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

"Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing supply shortfall as is the case here. It allows housing to come forward outside of settlements and within strategic gaps, subject to a number of provisions. It seems to me that this policy seeks to complement the aforementioned policies in situations where some development in the countryside is inevitable in order to satisfy an up-to-date assessment of housing need. It assists the decision maker in determining the weight to be attributed to the conflict with restrictive policies such as CS14, CS22 and DSP6 and provides a mechanism for the controlled release of land through a plan-led approach. Policy DSP40 is in accordance with Framework policy and reflects that the LPP2 post-dates the publication of the Framework in 2012. Conflict with it would be a matter of the greatest weight."

Land at Newgate Lane (North) and (South), Fareham (**FBC19**) (June 2021)

- 7.14 The matter of weight to be given to Policy DSP40 was considered in his [Inspector Jenkin's] Planning Balance section of the Newgate Lane (north) appeal at paragraphs 108 to 110 of his decision letter as set out below:

108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.

109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.

110. *Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).*

111. *Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.*

Land at Newgate Lane (East) **FBC20** (July 2021)

7.15 In the planning balance the Inspector sets out at paragraphs 45 and 46 the weight he attaches to various policies:

"45. FBC cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, FBC and the appellant agree that supply lies in the range of 0.95 to 3.57 years. Although it seems likely to be lower based on the evidence before me, I have used FBC's figure of 3.57 years as a benchmark to assist in making my decision. On that basis, the fact that the appeals development would be at odds with the area's strategy for the location of new housing and conflict, in that regard, with the development plan, including with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6, currently carries limited weight.

46. Although the weight attributable to the wider conflicts with LP1 Policies CS14 and CS22 is reduced, there would nonetheless be harm caused to the character and appearance of the area, including in terms of the Strategic Gap. LP2 Policy DSP40 criteria (ii) and (iii), however, carry greater weight, albeit that the evidence indicates that the balance they strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the housing supply shortfall has persisted for a

number of years in spite of this Policy. For the purposes of making my decision I have treated LP1 Policy CS17 as carrying full weight.”

Conclusions on the weight to be afforded to Policy DSP40

- 7.16 The Council considers Policy DSP40 should be afforded full weight in the planning balance given that it is designed specifically to address a situation where there is a HLS shortfall. Furthermore, policy DSP40 is wholly consistent with the NPPF (2021).
- 7.17 A breach of policy DSP40 puts a development squarely at odds with the Council’s development strategy and the core principle that planning for the future should be genuinely plan led.
- 7.18 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF paragraph 60 on ‘significantly boosting the supply of homes’ and with the NPPF as a whole. Policy DSP40 is wholly consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year housing land supply cannot be demonstrated.
- 7.19 Having regard to the findings of the Inspectors in the above appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 8 of the NPPF, it can be afforded full (or at the very least very substantial) weight in the planning balance as it was specifically designed to deal with those situations where there is not a five year housing supply. Accordingly conflict with it should therefore be a matter of the greatest consideration.

Conclusions on the weight to be afforded to Other Policies

- 7.20 As a result of the absence of a five year housing land supply, it is common ground that policies CS2, CS6 and DSP6 are out of date and that the weight to be attributable to conflicts with policies CS14 and CS22 is reduced, but only to the extent they derive from settlement boundaries that reflect out

of date housing requirements (Planning SoCG paragraphs 4.4 and 4.5). I give those policies, or parts thereof, which specifically relate to the provision or location of new housing limited weight due to the housing supply shortfall. However, policies CS14 and DSP6 both contain criteria which to seek to control development which would adversely affect landscape character and appearance. Since the appeal site is within a valued landscape, the landscape protection elements of those policies are consistent with the NPPF and, in line with the Posbrook Lane decision (**FBC17**) (Paragraph 67) should in my view attract significant weight, rather than the limited weight attributed in the Newgate Lane North and South decision (**FBC19**) (Paragraph 106) and Newgate Lane East decision (**FBC20**) (Paragraph 45), where the landscape was not considered to be 'valued'.

- 7.21 I accept (in line with paragraph 100 of the Newgate Lane North and South decision) that policy CS16 is more onerous than the approach in paragraph 174(b) of the NPPF, but it is nonetheless broadly aligned with the NPPF requirement that the economic and other benefits of best and most versatile agricultural land should be recognised in decisions, and so should in my view attract significant weight.
- 7.22 The remainder of the relevant policies are in my view consistent with the NPPF and should attract full weight.

8.0 Proper approach to determining these appeals

The Section 38(6) test

- 8.1 By Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, these appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point in determining these appeals is, therefore, the extent to which the appeal developments accord with or conflict with the adopted development plan policies. The decision maker must then turn to other material considerations, which in the case of the appeal developments include the NPPF.

Presumption in Favour of Sustainable Development

- 8.2 Paragraph 60 of the NPPF seeks to significantly boost the supply of housing.
- 8.3 As already stated above, paragraph 74 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out- of-date.
- 8.4 Paragraph 11 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are "out-of-date". It states:

"For decision-taking this means:

- c) Approving development proposals that accord with an up-to date development plan without delay; or*
- d) Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date^{FN8}, granting planning permission unless:*
 - i. The application of policies in this Framework that protect areas of assets of particular importance*

provides a clear reason for refusing the development proposed^{FN7}; or

- ii. *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

8.5 Footnote 7 to Paragraph 11 reads:

"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change."

8.6 The test set out at the second limb of paragraph 11 has become known as 'the tilted balance' as it tilts the planning balance in favour of granting permission.

Appropriate Assessment

8.7 NPPF Paragraph 182 states:

"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site".

8.8 The wording of Paragraph 182 is identical to that of Paragraph 177 of the 2019 version, which had been revised from the 2018 version to 're-engage' the presumption in favour of sustainable development where the appropriate assessment process had been positively concluded.

8.9 Paragraph 65 of the Posbrook Lane appeal decision (**FBC17**) reads:

"The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal

Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment."

- 8.10 The Council considers this to be the correct approach.
- 8.11 The appeal 1 proposal is likely to have significant effects on habitats sites as set out in deemed reasons for refusal c and d and the more recent matters raised by Natural England in respect of the New Forest SAC.
- 8.12 If otherwise minded to grant permission, an Appropriate Assessment under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 must be carried out by the Competent Authority which, for the purposes of determining planning appeals, is the Inspector appointed to act on behalf of the Secretary of State. In exercising their duty under the Habitats Regulations, a Competent Authority must, for the purposes of the assessment under the Regulations, consult the appropriate nature conservation body [Natural England] and have regard to any representations made by that body. If, having conducted an appropriate assessment, any adverse effects on the integrity of any habitats sites cannot be excluded beyond a reasonable scientific doubt, permission can only be granted if the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the appellants have not to date suggested.

Conclusion

- 8.13 If the Inspector concludes (following an appropriate assessment) that the proposal will not adversely affect the integrity of habitats sites, the tilted balance will be engaged if (at the time at which the appeals are determined) the Council is unable to demonstrate a 5YHLS.
- 8.14 However, if the Inspector is not able to so conclude, there is likely to be a statutory bar to allowing appeal 1. Were the Regulation 64 derogation tests met, there would not be a statutory bar, but the presumption in favour of sustainable development would be disapplied such that the appeal would

be determined on an unweighted basis in accordance with the development plan unless material considerations indicate otherwise (the test under Section 38(6) as set out above).

9 The Local Planning Authority's case on appeal 1

9.1 The following section of this statement sets out the putative reasons for refusal given by the Council on appeal 1 in more detail and considers the appeal proposal against the five criteria of Policy DSP40 which is engaged as a result.

9.2 It is structured as follows:

- Reason for refusal a1) – not sensitively designed to reflect the character of Funtley
- Reason for refusal a2) – harm to character and appearance of the countryside
- Reason for refusal b) – not sustainably located
- Reasons for refusal c) – d) - impact on European Protected Sites
- Reasons for refusal e) – h) - failure to secure open space, affordable housing provision, education provision and a travel plan
- Failure to comply with LPP2 Policy DSP40

Reason for refusal (a1) – not sensitively designed to reflect the character of Funtley

9.3 The first part of deemed Reason for refusal (a) reads:

"The proposed development is not sensitively designed to reflect the character of the neighbouring settlement of Funtley "

9.4 In this instance the neighbouring settlement, although not part of the defined urban area, is the housing development on the north side of Funtley Road and then further eastwards the rest of the settlement of Funtley within the defined urban settlement boundaries.

9.5 The Council has had the benefit of advice provided by its Urban Designer which provides a useful description of the character of the settlement of Funtley. The Appellants have also provided a design response which has been taken into account in preparing this statement.

9.6 It is important to note that matters of layout, scale, appearance and landscaping are all reserved matters for consideration at a later date should outline permission be granted. However, in considering whether to grant permission for 125 dwellings on the land the Inspector must first be

satisfied that this can be delivered in an appropriate form which not only accords with the policy test at DSP40(ii) but also delivers the high quality of design expected through local policy which responds positively to the character of the neighbouring settlement as required by Policy CS17. A further material consideration is NPPF paragraph 130 which requires, amongst other things, development to be sympathetic to local character and history, including the surrounding built environment and landscape setting.

- 9.7 The Council's urban designer notes in his comments that the illustrative masterplan shows very compact, urban perimeter blocks with many plots having substandard gardens and separation distances. The perimeter blocks are of high density and will be much more visually cramped than both the historic examples within the Meon Valley provided as part of the submission and the contextual development that exists within Funtley.
- 9.8 In response the Illustrative Layout Plan 'Parcel C' submitted by the Appellants with their design response shows how such a block could be laid out to provide the minimum garden sizes, separation distances and number of parking spaces required. This is a useful demonstration; however, the drawing appears to confirm that, if 125 houses are to be accommodated on site, at least some if not all of the development parcels across the site will need to be built out at a similar if not higher intensity as that shown here with minimal frontages to close knit plots and streets dominated by vehicles and hardsurfacing occupying a mixture of on- and off-street parking. No details of other parcels have been provided but even if there were to be sufficient space to deliver dwellings meeting the minimum amenity standards expected, the Council considers that the form of the development would not reflect the character of Funtley.
- 9.9 Consideration must also be given to how the proposal responds to the existing settlement area by creating a new settlement edge. The Appellants consider there to be no reason not to try to use new development of appropriate form and density to create a distinctive edge to the village. Nonetheless, they propose having varying density gradients within the scheme and a fragmented, landscape dominated southern edge with the community park. In turn the Council considers the most appropriate approach to be one where development becomes less dense and more spacious the further it goes away from Funtley Road allowing the development to visually 'bleed' into the landscape.
- 9.10 The Council's view is that in edge of settlement locations such as this where the sensitivity of the landscape is high, a 'fading out' of the development would provide a more sympathetic new edge to the

settlement. Whilst the Appellants have submitted a parameter plan showing densities decreasing across the site this is from a starting density of some 40dph, a materially higher density than the adjacent housing development on the north side of Funtley Road. The decrease in density does not seem to be evident from looking at the illustrative masterplan which appears to show a fairly consistent development form throughout notwithstanding the inclusion of some smaller perimeter blocks on the southern edge.

- 9.11 In summary, the proposal is not sensitively designed to reflect the character of the neighbouring settlement of Funtley.

Reason for refusal (a2) - harm to character and appearance

- 9.12 The second part of deemed Reason for refusal (a) reads:

"The proposed development... fails to respond positively to and be respectful of the key characteristics of the area harmful to the character and appearance of the countryside"

- 9.13 The character assessment of this area (6.2b) in the Fareham Landscape Character Assessment (LCA) 2017 includes the following observations (underlining added for emphasis):

"There is a typically sparse pattern of settlement within the whole of area 6.2, consisting mainly of individual farms or dwellings, or small clusters of buildings. The exceptions to this are a localised area of 'ribbon' development along the Southampton Road (in area 6.2a) and a rather anomalous area of recent residential development off the Funtley Road in the northern tip of area 6.2b. Lying on the opposite side of the railway line, the latter has no visual connection with the settlement of Funtley and is out of character with the surrounding landscape. However, its influence is limited by surrounding woodland (including SINC's) and vegetation along the rural Funtley Road and the character of the landscape within the triangle of land between the two sections of disused railway line and the motorway corridor remains essentially rural and unspoilt." (p121)

This area is generally of high sensitivity as one of the most distinctive and important landscape resources within the Borough. It contains a range of highly valued landscape, ecological and heritage assets across a large proportion of the area, and its natural and unspoilt qualities and the sensitivity of those valued assets, mean that it would be highly susceptible to the intrusion of built development. The potential for development to be accommodated within this area is consequently very low (p122)

This area retains a predominantly rural character, with relatively few urban influences or 'fringe' characteristics, and has an important role in maintaining the distinction between urban and countryside areas. The clear distinction between town and countryside, and the integrity of the valley landscape as a whole, would be compromised by significant development extending into the area beyond the existing urban edge. (p125)

The only opportunity may be to accommodate development within small pockets of undeveloped land within existing residential areas, e.g. off the Funtley Road, along Southampton Road or St Margarets Lane, as long as it is of a similar character and scale to other dwellings within the locality and can be sensitively integrated within the landscape to avoid adverse impacts. (p129)"

- 9.14 The Appellants have produced a LVA Addendum by Rummey Environmental (appended to which is the LVA by Fabrik carried out for the 2020 consent) and rebuttal comments in response to the Council's own advice which has been provided by Lockhart Garratt, a landscape consultancy instructed by the Council.
- 9.15 Starting with the harm in landscape and visual terms, the LVA Addendum by Rummey Environmental finds that the current proposal would have 'minor to moderate adverse' visual effects in the short term with potential for long term benefits. Despite the proposal being for more than double the number of homes and on a larger site than the 2020 consent scheme, the LVA Addendum suggests short-term landscape effects would be less harmful - 'moderate adverse' rather than 'moderate-major negative' as in the original LVA. In their consultation response Lockhart Garratt refer to these "*contradictory conclusions of less harm or new benefit from a greater extent of development*". Nonetheless, both the addendum and original LVA identify that significant adverse impacts are anticipated in the early years of the development but that the significance is likely to reduce in time. Lockhart Garratt similarly concludes that the proposed development would result in significant harm upon both the local landscape character and visual environment.
- 9.16 There is therefore clearly agreement by all parties that there would be significant adverse impacts in both visual and landscape terms. By design, Policy DSP40(iii) acknowledges that there will always be 'in principle harm' arising from development in the countryside and by seeking to only permit proposals which minimise adverse impacts it seeks to prevent that which would have actual, specific and significant harm.

- 9.17 The Officer report for the 2020 consent found that the development would have significant detrimental effects on the character and quality of local views, a view that was not disputed by the appellants and was in line with the conclusions of the submitted LVA. Notwithstanding this, the previous scheme was considered to satisfy Policy DSP40(iii). As set out at paragraph 8.9 of the report on the appeal 1 scheme, the previous Officer report to the Planning Committee highlights the high sensitivity of the landscape and the measures taken in that earlier application to minimise the adverse impacts of the development. The report acknowledges in particular the green/view corridors which align with the high ground to the south and the favourable lower density.
- 9.18 The current appeal 1 scheme proposes up to 125 dwellings over a larger site area. The overall density of the development is much higher and the form the development would take as a result considerably different. In comparison to the previous low density scheme which would be capable of delivering a loose-knit, landscape-led housing development, the proposal is now for an urban village type development as shown in the illustrative masterplan provided with the application.
- 9.19 The higher density of the development would, as shown on the illustrative masterplan, dictate a more urbanised built form. Urban perimeter blocks have replaced the landscape led character which would have previously been achievable with the lower density scheme. Whilst green/view corridors are retained and break up the urban form to an extent, they do not appear to relate to the wider landscape or the higher ground to the south which was previously an effective way of minimising the impact on the countryside. Lockhart Garratt refer to the current proposal as having watered down the positive design measures embodied within the consented scheme whilst more than doubling the amount of housing within the site. The proposal is clearly at odds with the observation made at p129 of the Fareham LCA 2017 which specifically mentions development within small pockets such as off Funtley Road needing to be "*sensitively integrated within the landscape to avoid adverse impacts*".
- 9.20 With the above observations in mind, the Council considers that there would be harm to the countryside as a matter of principle because the development would be outside the settlement boundary. However, and more importantly there would be an actual harmful and significant effect to the countryside in this location as a result of the site specific development proposals, which would constitute harm to a valued landscape. On that basis, the harm would not be minimised in accordance the requirements of Policy DSP40(iii). It is also considered that the

proposed development would fail to be sensitively designed to reflect the settlement character of the neighbouring settlement of Funtley.

- 9.21 Officers raised the foregoing concerns with the appellants at application stage and engaged in discussions with them over a reduced quantum of housing on the site. The appellants did not share Officers' views on the scale of reduction that is likely to be necessary to make the scheme acceptable in design and landscape terms and did not revise the application to propose fewer units.

Reason for refusal (b) – unsustainable location

- 9.22 Reason for refusal (b) reads:

"The proposal would not be sustainably located"

- 9.23 Without improvements to enhance accessibility for pedestrians, cyclists and users of public transport to local services and facilities, the appeal site is not sustainably located. Having regard to relevant guidance, the Council has assessed the appeal site's location in terms of what is considered to be a reasonable walking and cycling distance to those facilities. Distances to the nearest services and facilities have been identified and the walking/cycling route involved. Regard has also been had to the relative importance the destination and the quality of the walking/cycling route which may have a significant impact on its attractiveness.
- 9.24 Taking into account the proposed new public right of way for pedestrians and cyclists from the appeal site, up the hill and across the M27, Orchard Lea Junior School is brought within an acceptable distance following a suitably surfaced and lit route. Highlands Road local centre, where shops, hairdressers, food takeaways and a pharmacy are located, is approximately 1500m away. The doctor's surgery and dental practice on Highlands Road are a similar distance.
- 9.25 The appeal scheme includes proposals for a community building/local shop. As before with the 2020 consent, it is not known at this stage what the building would comprise or actually, as is always the case with a commercial enterprise such as a shop or café which is dependent on market forces, whether it would be delivered depending on the level of interest or demand. However, the fact that space for such a facility is to be provided on the site in close proximity to the proposed housing assists in increasing

the relative accessibility of the site subject to the facility being in a form which responds to local need.

- 9.26 At application stage, Officers also discussed further improvements which might be made in the surrounding area to make services and facilities more accessible. The appellants carried out an audit which identified possible improvements to the walking route from the site to Henry Cort Community College (the nearest secondary school). Improvements were also identified to the available width of the pavement through vegetation clearance and resurfacing works between the appeal site and the urban area of Funtley east of the railway bridge along Funtley Road. Discussions with public transport officers at Hampshire County Council revealed that a financial contribution from the developer to fund access rights for the bus route through Funtley to Knowle village would be a positive measure reinstating the bus service. The appellants indicated they would be willing to undertake the above measures as well as ensuring the access into the site is suitable to allow a bus to enter and turn around within the site if required at some point in the future. These measures could be secured through a combination of planning conditions and obligations in a Section 106 legal agreement or undertaking.
- 9.27 When the Council considered the 2020 consent it was acknowledged that the poor accessibility to local services and facilities from the site would be materially improved by the package of measures proposed by the appellants. Whilst those same measures are proposed with this current appeal scheme, the development scheme is materially different and, in proposing up to 125 dwellings, could result in more than double the number of residential units previously consented. The Council considers that the assessment of whether the proposal is sustainably located must be relative in scale and have regard to the quantum of development and the resultant number of residents living on the site in the future. Even taking into account the additional improvements to the walking route to Henry Cort College, the footway along Funtley Road east of the appeal site and the potential to fund the reinstatement of the bus service for an initial period, the proposal would still be on the margins of what would be considered acceptable in terms of acceptable walking and cycling distances to key local services.
- 9.28 As a result of these findings, it is considered there is some conflict with Policy DSP40(ii) in that the proposal for 125 dwellings would not be sustainably located. The Council does accept however that the degree of conflict with the policy in this particular instance would not by itself have been sufficient to have led to the application being refused. Instead, this

matter must be taken into account when carrying out the planning balance, weighing the benefits of the proposal against the relative harms.

Reasons for refusal (c - d) – impact on European Protected Sites

9.29 Reason for refusal (c) reads:

"The proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation"

9.30 Reason for refusal (d) reads:

"In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance"

9.31 Core Strategy Policy CS4 sets out the strategic approach to Biodiversity in respect of sensitive European sites and mitigation impacts. Policy DSP13: Nature Conservation of the Local Plan Part 2 confirms the requirement to ensure that designated sites, sites of nature conservation value, protected and priority species populations and associated habitats are protected and where appropriate enhanced.

9.32 The Solent is internationally important for its wildlife. Each winter, it hosts over 90,000 waders and wildfowl including 10 per cent of the global population of Brent geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within the Solent which are of both national and international importance.

9.33 In light of their importance, areas within the Solent have been specially designated under UK/ European law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). These are often referred to as 'European Protected Sites' (EPS).

9.34 As noted above, Regulation 63 of the Habitats Regulations provides that (absent IROPI) planning permission can only be granted by a 'competent authority' if it can be shown that the proposed development will either not

have a likely significant effect on designated EPS or, if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated EPS. This is the Habitat Regulations Assessment (HRA) process, of which Appropriate Assessment is a part. The competent authority is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations. The competent authority in determining this appeal is the Planning Inspector.

- 9.35 When considering the appeal development there are three main likely significant effects on EPS.
- 9.36 The first of these effects (reason for refusal c) relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) will have a likely significant effect upon the EPS.
- 9.37 Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites. Natural England have provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best available scientific evidence and research, however for each input there is a degree of uncertainty. Natural England advise local planning authorities to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.
- 9.38 The appellants originally submitted a nitrate budget as Appendix 5 to the Ecological Assessment which accompanied the application. Officers wrote to the appellants in April 2021 to raise several issues with the nutrient budget which, if found to be erroneous, would have knock-on effects to the efficacy of the proposed mitigation measures. The appellants responded with a revised nitrogen statement and nutrient budget on 24th September 2021, the same day as their appeal against non-determination was lodged with the Secretary of State.
- 9.39 The appellants' revised nutrient budget corrects an error relating to the site area and adjusts the proposed land uses to reflect amendments made to the parameter plan after submission of the application. The budget follows the Natural England methodology (v5, June 2020) and the Council is satisfied with the conclusion that the scheme would need to mitigate

against a surplus of 68.8 kg/N/year that would be generated by the proposed development.

- 9.40 The appellants' revised nitrogen statement identifies that the proposed new community park on land to the south of the appeal site comprises 9.88ha of which 6.78ha is in use for lowland grazing. Part of that grazing land (3.06ha) is already set aside to mitigate the near complete housing development on the north side of Funtley Road and this area of land is secured through the Section 106 accompanying that development. In their nitrogen statement the appellants contended that not all of this land is required to mitigate that development since the figure contained in the Section 106 was calculated using an earlier version of the Natural England guidance. They considered 2.29ha to be needed to mitigate the development at Funtley North meaning 4.49ha of mitigation land would be available at the community park site to assist in mitigation of the surplus nitrogen generated from the current appeal proposals. Notwithstanding, 4.49ha would only mitigate 35.92 kg/N/yr leaving 32.88 kg/N/yr of nitrate mitigation still needed. The appellants had previously submitted details of an agreement to purchase 26.20 kg/N/yr in nitrate mitigation credits from Warnford Estate, however this amount would not be sufficient to address the unmitigated surplus identified.
- 9.41 Officers took a contrary view to the appellants' approach to nitrate mitigation. Whilst it is agreed that additional nitrate mitigation will be required and that the community park land cannot provide sufficient mitigation by itself, the Council considers that more nitrate credits would be required from a third-party nitrate scheme in order to successfully achieve nutrient neutrality. The appellants had not provided a revised budget for the development north of Funtley Road to back up their assertion that less mitigation land is needed than originally calculated. Notwithstanding, the amount of mitigation land required is secured through a unilateral undertaking pursuant to Section 106 and planning permission for that development was granted following an Appropriate Assessment being carried out at the time which concluded no adverse effects on the integrity of PS. The development north of Funtley Road is nearing completion meaning the point at which the mitigation is required to take effect is imminent. It is not clear from the appellants' nitrogen statement how they consider that matter could be addressed satisfactorily. Moreover, the appellants have not set out a case for variation of the section 106 requirements on the north of Funtley Road scheme even if it were to be established that it were mitigating more than now required under current guidance. Assuming therefore that 3.06ha of the community park land would be required to mitigate the development at land north of Funtley

Road the remaining site of 3.72ha would mitigate 29.76 kg/N/yr leaving 39.04 kg/N/yr unmitigated. At application stage, no information had been provided by the appellants that agreement had been reached with a third-party nitrate mitigation scheme such as Warnford Estate for the appellants to purchase the required nitrate mitigation credits.

- 9.42 In summary, at application stage, the Council did not consider that the appellants had satisfactorily demonstrated that the appropriate mitigation would be in place to address the likely significant effects arising from increased wastewater from the development entering The Solent leading to adverse effects on the integrity of the EPS of The Solent. The failure to provide appropriate and appropriately secured mitigation meant the application was contrary to Policies CS4 & DSP13 of the adopted local plan as a result.
- 9.43 As set out at 5.5 to 5.7 above, on 22 November 2021, Aaron Wright of Turleys [the appellants' agent] sent an email to Alison Dyson [the case officer at PINS] which was copied to Richard Wright [case officer at FBC] in respect of nitrate mitigation. This email and the documents enclosed with it confirmed that the appellants had purchased nitrate credits of 39.04 kgN per year from Wanford Estate. On this basis the LPA now consider that refusal reason (c) has been addressed.
- 9.44 The second of these likely significant effects (reason for refusal d) on EPS concerns recreational disturbance on the Solent coastline through an increase in population. Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution to the Solent Recreation Mitigation Strategy (SRMS).
- 9.45 The Council acknowledges that these two reasons for refusal may be addressed through suitable planning obligations. Included in the Council's resolution on the appeal 1 application (**FBC6**) is a note for information which states:

"Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points e) - i¹) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990."

¹ It should be noted that the final refusal deemed reason is (h) so the reference to e) to i) should read e) to h)

- 9.46 Notwithstanding, to date no draft unilateral undertaking or agreement has been received to address either of these Habitats Regulations matters. The Council has therefore not been given the opportunity to fully scrutinise the mitigation measures proposed. The means of mitigating recreational disturbance (reason for refusal d) are well established and the appellants would simply need to provide an undertaking or agreement for contributions towards the SRMS. In addition, now further credits have been bought from Wanford Estate the development will achieve nutrient neutrality (reason c). The Council therefore considers reasons for refusal (c) and (d) should be resolved.

Reasons for refusal (e – h) - failure to secure open space, affordable housing provision, education provision and other local infrastructure requirements

- 9.47 Reason for refusal (e) reads:

"In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met"

- 9.48 Reason for refusal (f) reads:

"In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan"

- 9.49 Reason for refusal (g) reads:

"In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met"

- 9.50 Reason for refusal (h) reads:

"In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and the provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to

ensure measures are in place to assist in reducing the dependency on the use of the private motorcar.”

- 9.51 As referred to above, no draft unilateral undertaking or agreement has been received from the appellants. It is unclear what provisions will be made in relation to the open space (reason for refusal e), affordable housing (reason f), education (g) or the provision of a Full Travel Plan (reason h). The following paragraphs set out in turn the general expectations in respect to each of these matters.
- 9.52 Open space provision will need to accord with the requirements set out in Local Plan Part 1 Policy CS21 and the Council’s adopted Planning Obligations SPD (**FBC21**). The proposed number of units would require the provision of a Local Equipped Area for Play (LEAP) and one is shown on the illustrative site plan.
- 9.53 To comply with the requirements of Local Plan Part 1 Policy CS18, the appeal development must include the provision of 40% affordable housing comprising a blend of affordable tenures. Subject to appropriate size, mix and tenure being agreed to meet the identified local need, the Council considers this could be appropriately secured in a unilateral undertaking or agreement.
- 9.54 It is anticipated that a suitable financial contribution towards education provision in the local area would address reason for refusal (g).
- 9.55 It is assumed that the appellants wish to submit a unilateral undertaking prior to the inquiry for the Council to consider and dialogue would soon begin on the content of developer obligations. It is therefore anticipated that the above issues may be resolved beforehand with at the very least both parties being able to update the Inspector on their respective positions at the hearing.

Post Decision Changes in the Position of Natural England concerning New Forest SPA/SAC/Ramsar

- 9.56 The Council first became aware of Natural England raising an issue in respect of the New Forest SPA/SAC/Ramsar in their response to the Regulation 19 Local Plan Consultation. This was raised in NE’s representations dated 29 July 2021 (See **FBC11**).

- 9.57 In respect of emerging new housing allocations and the Local Plan HRA, Natural England state the following:

We welcome the fact that consideration of recreational disturbance to the New Forest SPA, SAC and Ramsar sites has been updated, with sections 6.4.18 to 6.4.20 referencing recent analysis of the New Forest 'zone of influence' (Footprint Ecology, February 2021). The report is based on recent visitor survey reports published in 2020 that conclude that new residential development within a 13.8km buffer zone of the New Forest designated sites is likely to have a significant effect on the sites via recreational disturbance, alone and/or in combination with other plans or projects.

The report suggests that the borough of Fareham is excluded from the 13.8km zone based on low average visitor rates in comparison to local authorities further west, and relatively low visit rates derived from the onsite survey data. It also recommends that large developments of around 200 or more dwellings within 15km of the New Forest sites should be subject to project HRA and mitigation may be required. The revised local plan HRA reflects this recommendation.

However, although the average visit rate for the borough is lower than that for neighbouring Eastleigh, it is notable that postcode data resulting from the telephone survey show visit frequencies in the western parts of Fareham are similar to those in the neighbouring borough of Eastleigh, suggesting the visit rate from these areas are higher than the average visit rate applied to the whole borough. Clearly, visitors do originate from these areas of Fareham and it is Natural England's view that they are likely to contribute to an in-combination effect on the sites. Therefore, to ensure the necessary certainty required under the Habitats Regulations that the Plan will appropriately address the impact, it is advised that the 13.8km zone is applied within the borough of Fareham to ensure all new development coming through in that area provide appropriate mitigation. (Please note that large development within 15km should also still be subject to HRA for this impact pathway.)

It is advised that your authority works in close collaboration with other affected local authorities within and surrounding the New Forest designated sites which share a commitment to develop a strategic, cross-boundary approach to habitat mitigation for the New Forest SPA/SAC/Ramsar. Natural England recommend such a strategy incorporates a package of measures including provision of suitable alternative green spaces and networks, and direct measures on the sites such as access management, education and communication, wardening, and importantly, monitoring. Monitoring work (of visitor patterns and ecological features of the sites) will be important to further the evidence base on which mitigation strategies can be updated.

In advance of such a strategy being agreed and adopted, Natural England advise the Council to implement a suitable interim strategy that ensures adverse effects from live development coming through the local plan period will be avoided. This may include measures as described above. Financial contributions can be directed towards the New Forest National Park Authority's (NFNPA) Habitat Mitigation Scheme that will enable the authority to deliver site specific mitigation measures on behalf of developments; such an approach would provide a certain and robust means to addressing the effects of recreational disturbance via direct measures at the protected sites. It is recommended that suitable levels of contribution are agreed with the NFNPA.

Natural England are committed to continue working with Fareham Borough Council and other affected local authorities to develop a strategic approach to addressing recreational impacts from new development on the New Forest designated sites.

- 9.58 In terms of the strategic approach being adopted by the Council in order to address the Reg 19 objection, the Council has joined the New Forest Project Steering Group which is looking to develop more strategic scale mitigation for all authorities involved/impacted.

Zone of Influence

- 9.59 Plans and projects have the potential to impact on European sites beyond the confines of the individual sites themselves. Guidance on Ecological Impact Assessment (CIEEM, 2018) states that potential impacts should be investigated which occur within the zone of influence that arises during the whole lifespan of the proposed plan or project. The potential zone of influence is defined as:
- Areas outside a European site which could be used by individuals of a species qualifying as a primary ecological feature of that site and potentially associated with that site;
 - Areas directly within the land take for the proposed development or plans;
 - Areas which will be temporarily affected;
 - Areas likely to be impacted by hydrological disruption; and
 - Areas where there is a risk of pollution and disturbance (e.g. noise).

- 9.60 The Zone of Influence for this project was previously assessed as being up to 5.6 kilometres to take into account potential recreational impacts associated with the Solent SPAs. However, based on the most recent research provided by Footprint Ecology, and consultation responses provided by Natural England, the Zone of Influence specifically in relation to the New Forest SPA/SAC and Ramsar site has been determined as being 13.8 kilometres, taken as the crow flies (or 15km for large developments). The appeal site falls within this zone of influence.
- 9.61 The Council have written to Natural England [**FBC22**] to express their concern that the Borough was included within the zone of influence and NE's email reply of 26th October 2021 [**FBC23**] makes clear that NE have taken a precautionary approach and therefore Fareham Borough, like others included in the ZOI, will be required to provide mitigation likely to be in the form of financial contributions to help reduce the expected impact of new residents on sensitive areas of the New Forest. This, at its simplest, could be a contribution towards wardening or a similar Strategic Access Management scheme such as applies to new development in proximity to the Thames Basin Heaths complex of sites. NE make it clear that they are not yet in a position to determine exactly what level of contribution will be applied to developments within Fareham Borough.
- 9.62 In the recent appeal on Land East of Crofton Cemetery, Stubbington the Inspector raised a number of questions on this issue [**FBC24**]. These were sent to the New Forest and their reply is attached at [**FBC25**]. The New Forest NPA answers to the Inspector's questions 2, 3 and 4 are highly relevant so I have repeated them below:

2. How is the Natural England catchment distance arrived at? As the crow flies? Does it adequately take account of travel distances? What does the survey data show about trips from Fareham?

NPA comment: Page 67 of the on-site [Footprint Ecology Visitor Survey Report](#) shows that the catchment area of 13.8 kilometres around the New Forest designated sites is the distance within which 75% of all short visits from home take place. This issue is explored in more detail in [Footprint Ecology's 'Zone of Influence' report](#) (2021) - Section 3 of which sets out the justification for the use of the 75% percentile for considering impacts, an approach adopted in strategic mitigation schemes elsewhere in the country.

The zone of influence (or catchment area) of 13.8 kilometres is determined in a straight-line distance (i.e. as the crow flies). Travel distances were considered by Footprint Ecology and Section 5 of the 'Zone of Influence' report confirms that the straight-line distance is

the most appropriate method for calculating the potential visits and impacts to the New Forest.

The survey data shows that there were regular visits from Fareham residents to the New Forest and that the mean number of visits per annum for Fareham was 15.33.

3. Taking into account the evidence put by NE and the scale and location of development, what would the likely impact of the proposed development be?

NPA comment: New development in Fareham and within the 13.8 kilometre 'zone of influence' will contribute, in-combination with other day visitors arising from new development, to potential recreational impacts on the New Forest's designated sites (SAC, Spa and Ramsar). A summary of the potential recreational impacts on the designated sites can be found in Footprint Ecology's Report entitled '[Impacts of recreation and potential mitigation approaches](#)' (2020). The HRA of the proposed development submitted by the appellant calculates that the number of visits from the whole development to the New Forest would be approximately 7,580 per annum. Natural England confirm that impacts must be mitigated in-perpetuity. Therefore, taking 100 years as reflecting the in-perpetuity period (as assumed in the National Park Authority's own Habitat Mitigation Scheme), then the total visits that require mitigation would be $7,580 \times 100 = 758,000$ visits over the lifetime of the proposed development. This level of impact, when considered in-combination with other planned development in the zone of influence, means impacts cannot be ruled out. The HRA information submitted by the appellant is based on the Footprint Ecology research reports (2021) and appears to make a series of reasonable assumptions.

4. If there are impacts in combination, how can appropriate mitigation be arrived at? How is any sum arrived at? How will it be spent? The UU is made out to Fareham BC, does Fareham have an appropriate scheme to direct funding to and would it provide adequate mitigation? Shouldn't any money, if required, go to the New Forest NP?

NPA comment: It is important to highlight that, at this point, there is no agreed mechanism or formula for deciding on a pro-rata approach for financial contributions towards the National Park Authority's own Habitat Mitigation Scheme (2020) from developments in neighbouring local planning authority areas. The Footprint Ecology 'zone of influence' report was published earlier this year and the project Steering Group (made up of the relevant local planning authorities, Natural England and Forestry England) are working through the next steps. Although there is not yet an established formula agreed across

the zone of influence, the overall approach suggested by the appellant does not appear unreasonable.

The [National Park Authority's Habitat Mitigation Scheme](#) (2020) includes details on how the level of financial contribution was calculated and the costed package of mitigation measures that will be delivered. This package of mitigation measures is considered to be appropriate mitigation by Natural England and was found sound by the Inspectors examining the Authority's draft Local Plan and supporting evidence base in Summer 2019.

The proposed contribution from the appeal scheme in Fareham is based on a proportion of the standard contribution level of the Authority's adopted mitigation scheme. This is based on the frequency of visits to the New Forest designated sites from Fareham compared with those of new residents in the New Forest National Park. The contribution, therefore, reflects the fact that new residents in Fareham will visit the designated sites in the New Forest less often than new residents in the New Forest National Park. As an overall approach, there is some logic to this and it draws on the published research on visitor patterns.

The typical annual expenditure of the Authority's Habitat Mitigation Scheme is outlined in Section 11 of our SPD. Any new contribution will be spent on the measures outlined in similar proportions to those outlined in this Section. The Scheme also has the ability of reassess each measure and consider new measures to help deliver the mitigation needed in an effective manner over time. In addition, a number of the mitigation measures contained within the Authority's mitigation scheme have the scope to be 'scaled up' if required.

In terms of the mechanism for securing any financial contributions towards mitigation measures within the designated sites, we would highlight that the National Park Authority is not the planning authority for this application and is not the 'competent authority' under the Habitats Regulations for the appeal. There have been cases previously of neighbouring planning authorities transferring received financial contributions to the Authority to be spent on mitigation measures within the New Forest's designated sites. In these cases the relevant planning authority (and competent authority) secured the contributions and they were then transferred to the National Park Authority, ring-fenced for mitigation measures. We are content with this approach, which is consistent with the framework for the Bird Aware Solent mitigation scheme for example, whereby planning authorities negotiate and secure necessary contributions which are then transferred to be spent on agreed mitigation measures.

- 9.63 The Appellant in the Crofton Cemetery appeal submitted a UU on the basis of a financial contribution of £351.20 per residential unit. The justification

for this figure was set out in a Shadow HRA and key paragraphs are set out below:

4.11 The average number of visits from Fareham Borough per year based on the telephone survey was 15.33 visits per annum. The proportion of visits from Fareham Borough per year based on the on-site visitors survey was 1% of all visitors. Therefore, it is proposed that an approach in terms of financial contributions would need to be proportionate to the relative number of visits in comparison with those from the New Forest National Park Authority.

4.12 The figure of 15.33 visits per annum from the telephone surveys or 1% of all visitors during the visitor survey is only approximately 7% and 5% respectively when compared to the number of existing visits generated by visitors from within the New Forest National Park (20% of all visits to the New Forest). It could be considered that a proportionate financial contribution would be between 7% and 5% of that of the New Forest Park Authority Habitat Mitigation Strategy. This information is summarised in Table 4.

Table 4: Relative Proportion of Visits

Survey Type	Fareham Borough (A)	New Forest National Park Authority (B)	Relative Percentage (B/A)
Telephone Survey	15.33 Visits Per Annum	211.3 Visit Per Annum	7%
Visitor Survey	1% Total Visits	20% Total Visits	5%

4.13 However, it is acknowledged that there are inherent limitations in the telephone survey and visitor survey as set out in the respective reports in the Footprint Ecology Study. Therefore, on a precautionary, but proportionate basis, it is proposed that securing a contribution of 10% of the value of the New Forest National Park Authority Scheme (or £351.20 per dwelling) would be appropriate when considering relative number of increases in visits likely as a result of this scheme. This would result in a total contribution of £72,347.20 for proposed development based on 206 dwellings.

- 9.64 Since the close of the Crofton Cemetery Inquiry the Inspector has written to NE by way of email dated 28 October 2021 seeking their views on a number of matters in order that she can make an Appropriate Assessment. This email is attached at **FBC24** and gave NE a deadline of 11th November 2021 for a response. NE responded to PINS by way of an email dated 24 November 2021 [**FBC25**] and advised that provided the inspector was satisfied that the proposed approach is suitably precautionary, and that such mitigation can be appropriately secured and delivered in perpetuity, NE would raise no further concerns.

- 9.65 The Council have sought to address this issue and now accept the need to conclude that it is not possible to conclude that new housing sites within the zone of influence will not have an adverse impact on the New Forest SAC. As a result, at the meeting of the Council's Executive Committee on 7th December 2021 a report on the '*Implications of Natural England advice on New Forest Recreational Disturbance*' was considered **FBC26**. The Report proposed an Interim Mitigation Solution (para 18 onwards) and mitigation payments (para 25 onwards) with the cost per dwelling being £247.05. The recommendation to the Executive was that they approve the interim mitigation solution set out in paras 18 – 30 and it can be confirmed that the Executive Committee agreed with this recommendation. The Minutes of this meeting will be forwarded as soon as they become available.
- 9.66 The upshot of all of this is that, although not part of the Council's putative reasons for refusal, the Inspector is the competent authority and as a matter of law will either need to be satisfied beyond a reasonable scientific doubt, and having regard to NE's position, that there will not be likely significant effects (such that an appropriate assessment is not necessary), or will need to undertake an appropriate assessment to determine whether adverse impacts on the integrity of the New Forest SPA/SAC/Ramsar can be ruled out.
- 9.67 If the Inspector, as Competent Authority for the purposes of this appeal, cannot conclude beyond a reasonable scientific doubt that there will not be any adverse impact on the integrity of the SPA/SAC the result would be:
- (2) The appeal must be refused under the Habitats Regulations unless there were imperative reasons of overriding public importance (which the Appellants have not, to date, suggested); and,
 - (3) The 'tilted balance' would not be engaged as set out in footnote 7 to paragraph 11 and paragraph 182 of the Framework.

Failure to comply with LPP2 Policy DSP40

- 9.68 Policy DSP40: Housing Allocations, of Local Plan Part 2, states that:

"Where it can be demonstrated that the Council does not have a five-year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

- i. The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall;*
- ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. It can be demonstrated that the proposal is deliverable in the short term; and*
- v. The proposal would not have any unacceptable environmental, amenity or traffic implications”.*

9.69 The Council considers the appeal proposal to comply with parts i) and iv). There is conflict with parts ii), iii) & currently also v).

9.70 Each of these five bullet points are worked through in turn below:

Policy DSP40 (i)

9.71 The proposal for up to 125 dwellings is relative in scale to the 5YHLS shortfall and therefore bullet i) of Policy DSP40 is satisfied.

Policy DSP40 (ii)

9.72 In respect of Policy DSP40(ii) there are four different policy requirements that must be met. Firstly, whether the proposal would be sustainably located. Secondly, whether the site is adjacent to the existing urban settlement boundary. Thirdly, that the development is well-related to the existing settlement boundary. Fourth, that the development would be capable of being well-integrated with the existing neighbouring settlement.

Whether the proposal would be sustainably located

9.73 As a result of the findings set out at 9.22 to 9.28, the Council consider there to be some conflict with Policy DSP40(ii) in that the proposal for 125 dwellings would not be sustainably located. The Council does accept however that the degree of conflict with the policy in this particular instance would not by itself be sufficient to have led to the application having been refused. Instead, this matter must be taken into account when carrying out the planning balance, weighing the benefits of the proposal against the relative harms.

Whether the site is located adjacent to the existing urban settlement boundaries

- 9.74 The appeal site is not located adjacent to the existing urban settlement boundary which lies on the other side of the railway line to the east. This was acknowledged in the report for the 2020 consent which also noted the proximity of the site to housing development on the north side of Funtley Road. However, the development is proposed adjacent to an area which, for all intents and purposes, bears all of the characteristics of the urban area. Whilst full weight cannot be given to the proposals map of the emerging Fareham Local Plan 2037, it is noted that the land to the north of Funtley Road is proposed to be included within the defined urban settlement boundary as well as the land covered by the HA10 allocation.

Whether the proposal would be well related to the existing urban settlement boundaries

- 9.75 Whilst not adjoining the existing urban settlement boundary, the development on the north side of Funtley Road provides a definitive edge to the built up area. Officers consider that in principle development on the south side of the road could be accommodated so that it related well to the existing urban area. This would however be dependent on the form of development being of a suitable scale and appearance so as to represent a logical extension to the edge of the urban area and not to appear incongruous when encroaching into an area of countryside. The visual impact of the proposed development on the character and appearance of the area are discussed further below in this SoC.

Whether the proposal can be well integrated with the neighbouring settlement

- 9.76 This particular policy test looks to ensure that extensions to the urban area have good connectivity with the existing settlement area. The appeal scheme proposes vehicular and pedestrian access from Funtley Road with two further indicative locations for pedestrian access at the northern boundary (as shown on the submitted illustrative masterplan). Connectivity through the site to the south over the M27 is provided by the pedestrian/cycle public right of way.
- 9.77 As set out above, improvements have been identified to the footway between the appeal site and the eastern side of the railway bridge along Funtley Road to the east where the existing urban area is closest. The

railway bridge separates the urban area of Funtley and the housing development on the western side of the bridge. Currently the larger part of Funtley lies on the eastern side where approximately 180 dwellings are located as well as The Miners Arms public house and the Funtley Social Club. The only means of travelling on foot between the western and eastern sides of Funtley is via the railway bridge and along the pavement. At present the journey is made less attractive by the narrowness of the footway. Improvements to increase the effective width of that footway by vegetation clearance and/or resurfacing would provide better connectivity between the two settlement areas, not only promoting journeys on foot from the appeal site but also integrating the appeal site with the urban area of Funtley.

DSP40(ii) Summary

- 9.78 In summary, the site is located immediately adjacent to housing development of an urban nature. The proposed and improved pedestrian and cycle connections mean the proposal can be well integrated with the neighbouring settlement. However, as set out above, there is some conflict with Policy DSP40(ii) in that the proposal is not sustainably located adjacent to, and well-related to, the existing urban settlement boundaries.

Policy DSP40 (iii)

- 9.79 The test of Policy DSP40(iii) has two elements; first, that the proposal is 'sensitively designed to reflect the character of the neighbouring settlement' and second, 'minimises any adverse impact on the Countryside'.

Sensitively designed to reflect the character of the neighbouring settlement

- 9.80 As a result of the findings set out at 9.3 to 9.11, the Council considers that the proposal is not sensitively designed to reflect the character of the neighbouring settlement of Funtley and therefore this particular policy test is failed.

Minimise any adverse impact on the Countryside

- 9.81 As a result of the findings set out at 9.12 to 9.21, the Council consider there would be harm to the countryside as a matter of principle because the development would be outside the settlement boundary. However, and more importantly there would be an actual harmful and significant effect

to the countryside and valued landscape in this location as a result of the site specific development proposals.

DSP40(iii) Summary

- 9.82 In summary, it is considered that the proposed development would fail to be sensitively designed to reflect the settlement character of the neighbouring settlement of Funtley and fails to minimise the harm to the character and appearance of the countryside, contrary to DSP40(iii).

Policy DSP40 (iv)

- 9.83 There is no reason to suggest that the proposed 125 houses could not be delivered within the short term. The Council considers this could be clarified by the appellant providing details of the anticipated timetable for the development coming forward in the event the appeal is allowed to demonstrate the deliverability of the proposal. The proposal would therefore be in accordance with point iv of policy DSP40.

Policy DSP40 (v)

- 9.84 The final test of Policy DSP40 requires that the proposal does not have any unacceptable environmental, amenity or traffic implications. These issues are considered in turn below. In summary however, there are currently unacceptable environmental impacts arising from the development which mean the proposal fails to accord with DSP40(v), though the Council considers these should be capable of resolution through planning obligations under a unilateral undertaking or agreement.

Environmental

- 9.85 The impact of the development on European protected sites has been set out earlier in this statement. There are three main adverse effects on the integrity of EPS contrary to Policies CS4, DSP13, DSP14 & DSP15 of the adopted local plan.
- 9.86 However it is considered that each of these matters could be overcome through an appropriate unilateral undertaking / agreement.

Amenity

- 9.87 As this is an outline application with all matters except access reserved for later consideration, amenity issues would be considered at reserved matters stage.

Traffic

- 9.88 The final comments of Hampshire County Council dated 7 December 2021 confirm that they have no objection in principle subject to vegetation clearance and footpath widening of the footpath route to Funtley along with the provision of a bus turning facility being provided and in the interim a financial contribution to pay the fee of £5,500 per annum for a period of 5 years to allow the number 20 bus service to use the railway bridge on Mayles Lane.

10.0 Planning balance and conclusions

- 10.1 As noted above, the Council resolved that, had it been able to determine the appeal 2 application, it would have granted permission, and it has no objection to appeal 2 being allowed.
- 10.2 So far as appeal 1 is concerned, the proper approach to determining this appeal is set out at Section 8 of this statement.
- 10.3 The Council cannot currently demonstrate a 5YHLS and this is a material consideration in the determination of this appeal.
- 10.4 Even then, the so called 'tilted balance' would be disapplied unless the Inspector, in their capacity as the competent authority for Habitats Regulations purposes, had carried out an Appropriate Assessment concluding no adverse effects on the integrity of habitats sites. It has been identified that the appeal proposal would have likely significant effects upon the Solent and Southampton Water Special Protection Area, a Ramsar site, Solent Maritime Special Area of Conservation and would have likely significant effects upon the New Forest SAC.
- 10.5 The site is outside of the defined urban settlement boundary and the proposal does not relate to agriculture, forestry, horticulture and required infrastructure. The principle of the proposed development of the site would be contrary to Policies CS2, CS6 and CS14 of the Core Strategy and Policy DSP6 of Local Plan Part 2: Development Sites and Policies Plan.
- 10.6 The proposals have been carefully assessed against Policy DSP40: Housing Allocations which is engaged as this Council cannot demonstrate a 5YHLS. Regard has also been had to the Council's 5YHLS position (**FBC14**) and the Government steer in respect of housing delivery.
- 10.7 It is considered that the proposal satisfies two of the five policy tests (points i and iv).
- 10.8 With regard to Policy DSP40(ii) the Council considers that there is some conflict with the policy requirement for the proposal to be sustainably located. It is acknowledged however that the degree of conflict with this policy test would not have been sufficient by itself to have led to a refusal of the planning application. Nonetheless the conflict with this policy weighs

against granting planning permission on the negative side of the planning balance.

- 10.9 With regards to Policy DSP40(iii), the Council considers that there would be a harmful and significant effect to the countryside, which is considered to be a valued landscape, in this location as a result of the site specific development proposals and on this basis the harm has not been minimised in accordance the requirements of Policy DSP40(iii). It is also considered that the proposed development would fail to be sensitively designed to reflect the settlement character of Funtley. The proposal therefore fails to satisfy this policy test and is also considered contrary to Policies CS14 and CS17.
- 10.10 The Council also currently consider that the proposal would be contrary to Policy DSP40(v) as it would result in adverse effects on European Protected Sites (contrary to Policies CS4, DSP13, DSP14 & DSP15). However, these effects should be capable of being mitigated through a section 106 agreement or unilateral undertaking.
- 10.12 The benefits of the appeal scheme are set out in paragraphs 8.91 to 8.95 of the Committee Report and overall, it is accepted that there would be substantial benefits arising from the development in terms of housing provision, accessibility enhancements and the provision of a community building/local shop and park, to which substantial weight should be attributed.
- 10.13 The Council has carefully weighed the benefits which would be delivered by the proposals, having regard for the Council's 5YHLS position against the conflict with adopted local plan policies and the policies of the NPPF, and the harms outlined above. The Council considers the harms identified and especially how the increase from 55 units to 125 units would result in material harm to the character and appearance of the area, which is a valued landscape, significantly and demonstrably outweigh the benefits arising from the scheme even if the habitats issues are resolved.
- 10.14 As explained above, if the Inspector finds (having regard to reasons for refusal (c) and/or (d) and/or the New Forest issue) that an adverse effect on the integrity of an EPS cannot be ruled out beyond a reasonable scientific doubt, there is a statutory bar to granting permission unless the derogation tests under Regulation 64 of the Habitats Regulations are satisfied (which the Appellants have not suggested, and which the Council does not consider could be the case). If the derogation tests were met, the tilted balance would be disengaged and the Council's position would be

that, on a straight application of the section 38(6) test, the appeal should be dismissed because the proposal does not accord with the development plan and the material considerations do not indicate a decision otherwise than in accordance with the plan.

- 10.15 Whether or not the habitats issues are resolved, therefore, the Council considers that the planning balance falls against the appeal 1 scheme. The Inspector will be respectfully invited to reach the same conclusions and dismiss appeal 1. As explained above, the Council is content for the Inspector to allow appeal 2.