

Planning Proof of Evidence

Mr. Timothy John Burden BSc (Hons) MSc

MRTPI

Land to the South of Funtley Road, Funtley

Appeals by Reside Developments Limited and Atherfold Investments Limited against the non-determination of two applications by Fareham Borough Council at Land South of Funtley Road, Funtley

Appeal References: APP/A1720/W/21/3284532 / 3283643

LPA References: WA/2020/1684 and P/20/1166/CU

Date: January 2022

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Our reference
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Appendices

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Appendix TB18	<i>"Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT"</i> appeal decision (Reference APP/A1720/W/17/3192431) dated 10th September 2018
Appendix TB19	<i>"Land to the east of Downend Road Portchester"</i> appeal decision (Reference APP/A1720/W/19/3230015) dated 5 November 2019
Appendix TB20	Extracts from updated SHELAA (April 2021) regarding 'Funtley Road South, Funtley' (site ref: 3121)

1. Introduction

Qualifications and Experience

- 1.1 My name is Timothy John Burden. I am a Director at Turley Associates (trading as 'Turley'), based in the Reading office. I am instructed to present evidence to this Inquiry on behalf of Reside Developments Ltd and Atherfold Investments Ltd ('the Appellants').
- 1.2 I hold a Bachelor of Science Degree with Honours in Human Geography from the University of Reading (1999) and a Master of Science in Town and County Planning, also from the University of Reading (2004). I am a Member of the Royal Town Planning Institute.
- 1.3 I have been a Director at Turley since September 2015, when the Reading office of the company opened. Before then, I was a Director at Boyer in Wokingham from August 2012; and an Associate at the Reading Office of Barton Willmore LLP from 2007, having joined the company as Planner in April 2004. I was previously employed as a Planning Officer / Senior Planning Officer in the Development Control Department at Reading Borough Council, where I represented the Council in the appeal process as well as dealing with a large caseload of planning applications and other statutory consents.
- 1.4 I have consequently given professional advice on a wide range of planning projects, including Section 78 Appeals heard by way of written representation, informal hearing and public inquiry throughout the country for a range of private sector clients and landowners. My experience includes a large number of planning applications for residential development for a range of clients including housebuilders, landowners, and land promoters. I have also given evidence at many Examinations in Public.
- 1.5 I am familiar with the Appeal Sites, the relevant planning policies, as well as the circumstances and material considerations affecting the determination of the current appeal. I have acted as an expert planning witness at inquiry on a number of occasions across the country, including in respect of residential proposals.
- 1.6 The evidence that has been prepared and set out in this proof of evidence has been prepared in accordance with the guidance of my professional institution, the Royal Town Planning Institute. The opinions expressed are true and my professional opinion.

The Appeal Schemes

- 1.7 This Planning Proof of Evidence has been prepared on behalf of Reside Developments Limited and Atherfold Investments Limited (the 'Appellants') to support two appeals against Fareham Borough Council's (the 'Council') failure to determine the following:
 - **(Appeal 1)** an outline planning application (ref: P/20/1168/OA) for residential development (*'the residential development'*) for up to 125 dwellings; and
 - **(Appeal 2)** a full application (ref: P/20/1166/CU) for a Community Park (*'the Community Park'*) on Land South of Funtley Road, Fareham).

1.8 The Appeal Scheme ('Appeal 1' or herein after referred to as the 'Appeal Scheme') seeks to increase the number of homes on the Appeal Site from the approved 55 unit scheme to up to 125 homes, but within broadly the same areas as both the extant permission and entirely within the emerging site allocation.

1.9 The description of development for the Appeal Scheme is as follows:

"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."

1.10 This application was made in parallel with an application for the change of use of land to the south of the outline application site, for it to become a Community Park (Appeal 2). That application was given reference P/20/1166/CU and seeks full planning permission for:

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

1.11 It is proposed that the implementation of the Community Park can be tied to the outline application as part of a legal agreement, as occurred on previous approved schemes at this site. The appeals should be considered concurrently. The Council have confirmed that if the appeal had not been lodged, they would have approved the Community Park application.

The '2020 consent'

1.12 Outline planning permission (planning reference P/18/0067/OA) was previously applied for by the Appellant 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).

1.13 That application was considered by the Council's Planning Committee in July 2018, again in October 2018 and finally in September 2020. Officers recommended that outline planning permission be granted at each of these Committee meetings, and a resolution to grant planning permission was made on each occasion.

1.14 The relevant Committee Reports are attached at **Appendix TB1** (the outline planning permission granted is hereafter referred to throughout the remainder of my proof as the "2020 consent").

1.15 Outline planning permission was eventually granted, following the completion of a Section 106 Agreement, on 2nd September 2020 (see decision notice at **Appendix TB2**).

1.16 I note that the Officers Report for the application dated 18th July 2018 (at page 11) for the 2002 consent stated that *"in relation therefore to this second test of Policy DSP40, officers consider the package of measures proposed by the applicant to materially*

improve the sustainability of the location". That approach was followed through in the subsequent supplementary reports.

- 1.17 In relation to Policy DSP40, Officers considered four of the five tests to be fully met for that particular application. It is clear that the Council, in assessing the 2020 consent, determined that the scheme and the geographic location of the Appeal Site was sustainable, and granted outline planning permission.

Draft Site Allocation in the Revised Publication Local Plan 2037

- 1.18 As I discuss further in Chapter 4, the Appeal Site has been consistently promoted through the Local Plan process for several years for circa 120 homes. The site has been proposed for allocation through policy HA10 of the Revised Publication Local Plan 2037.
- 1.19 Emerging Policy HA10 proposes to allocate 5.74ha of land at Funtley Road South for 55 dwellings, clearly indicating that the Council considers the site to be a sustainable location for residential development, and this is supported by the Sustainability Appraisal. The granting of planning permission (planning reference P/18/0067/OA) for 55 dwellings on site further demonstrates the Council's commitment to the site's delivery.
- 1.20 The Appellant has submitted detailed representations throughout the Local Plan process (enclosed as **Appendix TB3**). The continual identification of the Appeal Site as a housing allocation site has always been supported, however evidence provided by the appellant in response to these consultations, as well as ongoing discussions in relation to the appeal scheme, has clearly demonstrated that the Appeal Site is capable of accommodating additional dwellings to meet the housing need without any adverse impacts to character or landscape.
- 1.21 The '*Fareham Borough Council Revised Publication Local Plan*' was submitted for independent examination on 30th September 2021. The status of the Local Plan is gaining weight, but as I note later in evidence, it still must be afforded limited weight as it has not been tested at Examination.
- 1.22 However, I consider that the draft allocation of the Appeal Site demonstrates the LPA's in-principle acceptance that the site is a sustainable location for housing development for at least 55 dwellings.
- 1.23 It is also important to note that the Appeal Scheme broadly meets the site-specific requirements of draft policy HA10 as set out in this proof of evidence and the evidence presented by Mr. Rummey. Furthermore, outline planning permission (planning reference P/18/0067/OA) has been granted for 55 homes and remains extant.
- 1.24 I also note that at no stage throughout the Council's consideration of the current Appeal Scheme, its consideration of the 2020 consent, or through the ongoing allocation of the site through the emerging Local Plan and its various consultation stages, has any evidence been produced by the Council which states that the Appeal Site is sensitive in landscape terms.

Scope and Structure

- 1.25 In this context, my Proof of Evidence provides evidence on behalf of the Appellants in relation to planning matters. This includes further consideration of the background to the Appeal Site and surrounding area, as well as the reasons for refusal cited by the Council.
- 1.26 I place a particular emphasis on those policies concerning the principle of residential development, the application of the presumption in favour of sustainable development and how the various material considerations are to be weighed in the 'planning balance'. I also note the planning history of the Appeal 1 site (herein after referred to as the 'Appeal Scheme') and its draft allocation within the Revised Publication Local Plan.
- 1.27 My Proof will also set out planning policy at the local and national level and other material considerations and my expert opinion on these matters insofar as they relate to the Appeal Scheme.
- 1.28 My evidence should be read in conjunction with that of the other appellant's witnesses, namely:
- **Mr. Robert Rummey**, of Rummey Design on Urban Design and Landscape;
 - **Mr. David McMurtary**, of Motion on Highways;
 - **Mr. Karl Goodbun**, of Ecology Solutions Limited on Ecology; and
 - **Mr. Steven Brown**, of Wolfe Bond on 5 year housing land supply and Affordable Housing Need.
- 1.29 Having read the evidence of the other witnesses I confirm that I support their conclusions and will cross reference relevant parts of their evidence to support my assessment of the relevant material considerations for this appeal.
- 1.30 My evidence explains that by way of the application of paragraph 11 of the Framework, the policies which are most important for determining the application, save for the flexibility afforded by adopted Policy DSP40, are out of date. This includes the content of the housing requirement policies that pre-date compliance with even the 2012 Framework; and the agreed fact that the Council is unable to demonstrate a five year supply of deliverable housing land. The 5 Year Housing Land Supply position will be dealt with in evidence by Mr. Brown.
- 1.31 My evidence addresses reason (b - h) in so far as it relates to the sustainability of the site, application of planning policy and Section 106 obligations; whilst reason (a) relating to the landscape impact and design of the proposal is addressed in the evidence of Mr. Rummey.
- 1.32 My evidence concludes in relation to the acceptability of the Appeal Scheme having regard to the overall planning balance, which I have carried out in the context of the presumption in favour of sustainable development at paragraph 11 of the NPPF

(including in relation to the demonstrable lack of a five year supply of deliverable housing land).

Statement of Common Ground and Areas of Disagreement

1.33 In my Proof I reference the following Statements of Common Ground ('SoCG'):

- **Planning Statement of Common Ground (CDD.1);**
- **Housing Statement of Common Ground (CDD.2)** (to follow if required once Council update is available, as agreed at the CMC);
- **Ecology and Nature Conservation Statement of Common Ground dated 7th January 2022 (CDD.3); and**
- **Agreed Statement on Transport Matters Statement of Common Ground dated 7th January 2022 between the Appellants and Hampshire County Council as highways authority (CDD.4).**

1.34 A Planning Statement of Common Ground ('SoCG') has been agreed between the Appellant and the Local Planning Authority (LPA), Fareham Borough Council (the 'Council') (**CDD.1**). This confirms that both parties are agreed that reasons for refusal (c) through to (h) are capable of being addressed by planning conditions or by means of a legal agreement prepared under Section 106 of the Town & Country Planning Act 1990.

1.35 This leaves reasons (a) to (b) to be addressed in evidence.

1.36 As set out in the Planning SoCG (**CDD.1**), the matters now agreed between the Appellant and Fareham Borough Council ('FBC') are wide ranging, including the following:

- *As concluded by the LPA's Housing Land Supply Position Statement (February 2021), the LPA does not have a five year housing land supply;*
- *It is agreed that as a result the presumption in favour of sustainable development of paragraph 11d applies for the determination of this appeal, provided that in undertaking an appropriate assessment, the Inspector concludes that the proposal will not adversely affect the integrity of the habitats site (with reference to paragraph 182 of the NPPF);*
- *The provision of up to 50 affordable dwellings (40%) will assist in meeting a significant need for affordable housing within the Borough;*
- *The provision of 75 market housing will assist in meeting an identified significant shortfall within the Borough;*
- *Reasons for refusal (c) to (h) are capable of being addressed via Section 106 Agreement and / or planning conditions;*

- *There are no outstanding technical objections to the Appeal Scheme, subject to appropriate planning conditions;*
- *Hampshire County Council as Highways Authority confirms that the proposal is acceptable in highways and sustainability terms; and*
- *The LPA has no objection to the Appeal Scheme with regard to matters relating to highways safety; the form and design of the site access; highways capacity and traffic impact; and the principle of residential development in this location.*

1.37 As set out at Chapter 6 of the Planning SoCG, there continues to be disagreement between the Appellant and the Council in relation to the following matters:

- *Whether the appeal development is sensitively designed to reflect the character of the neighbouring settlement of Funtley;*
- *Whether the appeal development responds positively to and is respectful of the key characteristics of the area;*
- *Whether the appeal development is harmful to the character and appearance of the countryside; and*
- *Whether the appeal development would be sustainably located.*

Main issues and other evidence

1.38 At the Case Management Call (“CMC”), the Inspector helpfully set out the following main issues to be addressed in evidence, as follows:

a) Whether or not the proposed development would be in a suitable location, with particular regard to its relationship with the existing settlement; and,

b) The effect of the proposed development on the character and appearance of the area, with particular regard to whether or not it would enable a detailed scheme to come forward that would reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside.

1.39 Separate from the main issues identified by the Inspector, and as discussed at the CMC, further matters to be considered include the following:

a) The effect the development would have, on its own or in combination, on the integrity of protected habitat sites with respect to the effects of any nutrient levels entering the water environment and any recreational disturbance;

b) Whether or not future occupiers of the development would have access to recreational facilities of an appropriate standard;

c) Whether or not future occupiers of the development would have access to suitable education facilities and the effect the development would have on such facilities;

d) Whether or not the development would provide suitable and sufficient affordable housing; and

e) Whether or not future occupiers of the development would have access to the facilities and incentives to minimise reliance on private car travel.

- 1.40 In setting out my evidence, and addressing the Council's reasons for refusal, I rely upon accompanying evidence prepared on behalf of the Appellant which covers issues arising from the reasons for refusal.

Overarching Summary of the Appeal Scheme's Merits

- 1.41 Having regard to the relevant planning policy and material considerations, the acceptability of the Appeal Scheme may be summarised as follows.
- 1.42 Firstly, as I explain in Chapter 3, both the Local Plan Part 1: Core Strategy (August 2011) ('LPP1'), and the Local Plan Part 2: Development Sites and Policies (June 2015) ('LPP2'), are over 5 years old and the Council cannot demonstrate an up-to-date five year supply of deliverable sites for housing. Therefore in accordance with paragraphs 11(d) of the NPPF, the development plan is to be regarded as out of date.
- 1.43 The Council's continued inability to demonstrate a robust five year housing land supply position triggers the operation of policy DSP40 of the Local Plan Part 2: Development Sites and Policies (June 2015) ('LPP2'), which was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14, DSP6 and CS22. Its role is effectively to permit development in breach of those policies when the Council could not demonstrate a 5 year housing land supply.
- 1.44 The development of the Appeal Site for a sustainable form of development should now be considered favourably in accordance with the advice at paragraph 11 of the NPPF, having regard to the importance of delivery of housing for meeting the Borough's market and affordable housing needs and the delivery of economic and sustainable growth noting that there is a significant deficit.
- 1.45 The scheme represents a sustainable form of development and involves the provision of significant benefits.
- 1.46 Although the scheme is submitted in outline, this is a 'landscape-led' scheme, inherently respectful of the key landscape characteristics of the site within its wider landscape context, and that with its proposals for regenerating the landscape appropriately (as opposed to imposing artificial constructs on it) the proposals are not harmful to the character and appearance of the countryside.
- 1.47 As detailed in the application submission, and expanded upon in the evidence of Mr. Rummey, the Appeal Scheme is of a high quality that will reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside. The approach to the masterplanning work sets out clear development parameters and design expectations for the delivery strategy of the project, and the Appellants have suggested the use of an appropriately worded planning condition to ensure that the design philosophy for the site is carried through into the reserved matters submission,

and subsequent on site implementation, to ensure the integrity of the design quality our client is seeking to achieve on this site.

- 1.48 Mr. Goodbun's evidence explains the biodiversity and ecological enhancements proposed, and how the statutory requirements regarding protected interests have been fulfilled and positively addressed. Indeed, as he highlights, the Appeal Scheme proposes a significant biodiversity net gain ('BNG').
- 1.49 I am also of the view that the identified benefits coupled with the dire five year housing land supply position and acute need for affordable housing represent material considerations of significant weight when considered against the asserted conflict with Policy DSP6, CS14 and CS16.
- 1.50 In addition, and as I explain Chapter 3 of my evidence, policy DSP40 operates deliberately as an exception to these restrictive policies where, as here, the Council cannot demonstrate a five year supply of deliverable housing land. The Appeal Scheme accords with the five criteria in policy DSP40. Consequently, it accords with the development plan taken as a whole.
- 1.51 Reasons (c) – (h) are overcome through a Section 106 Agreement that is currently being drafted between the Appellant and the relevant Councils.

Structure of my Proof of Evidence

- 1.52 My evidence follows the following order:
- **Section 2.0 – Overview of the Appeals**
 - **Section 3.0 – The Development Plan**
 - **Section 4.0 – Material Considerations and Planning Propositions**
 - **Section 5.0 – The Planning Balance**
 - **Section 6.0 – Summary and Conclusion**
- 1.53 I will demonstrate that the Appeal Scheme is supported by both the adopted Local Plan in accordance with the development plan when read as a whole, and particularly with respect of LPP2 policy DSP40.
- 1.54 Further, in accordance with paragraph 11(d) of the National Planning Policy Framework ('NPPF'), I will demonstrate that the benefits are significant and that any adverse impacts do neither significantly or demonstrably outweigh those benefits.
- 1.55 The Appeal Scheme is also supported by an emerging site allocation, albeit for a lesser number of dwellings than that sought through the Appeal Scheme.

2. Overview of the Appeals

- 2.1 Both planning applications were registered on 6th October 2020, and following a number of agreed extension of time to determine them, the latest of which lapsed on 19th May 2021, the Appellants felt it necessary to appeal due to their non-determination, with appeals lodged in September / October 2021 respectfully.

Appeal 1 – residential development

- 2.2 The residential application was submitted with all matters reserved except means of access. The proposed description of development for this application reads:

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

- 2.3 Matters of scale, appearance, layout and landscaping are to be reserved. A series of parameter plans and an illustrative masterplan was submitted in support of the application.
- 2.4 Three parameter plans were submitted in support of the application:
- *Parameter Plan – (Drawing Reference RD1731-F3- L107-P3);*
 - *Height Parameter Plan - (Drawing Reference RD1731-F3-L128-P1);*
 - *Density Parameter Plan – (Drawing Reference RD1731-F3-L114-P1).*
- 2.5 The Height Parameter Plan indicates that housing within the developable areas would be predominantly 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.
- 2.6 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.
- 2.7 The overall Parameter Plan identifies key features such as the Community Park, a LEAP, community shop and hall.
- 2.8 The application was also accompanied by an Illustrative Masterplan (RD1731-F3-L100 P4) to provide the Council with the confidence that the site can accommodate up to 125 homes. Further, during the course of the determination of the application, indicative plans for two of the proposed development parcels were submitted to the Council. These have been somewhat overlooked by the Council and no formal commentary received.

- 2.9 It should also be noted that the application is explicitly for “up to 125 dwellings”, which would allow flexibility at the subsequent reserved matters stage.
- 2.10 A more detailed Illustrative Masterplan has been included within Mr. Rummey’s Proof of Evidence. This demonstrates that up to 125 dwellings can be achieved on the site.
- 2.11 A pedestrian and cycle public right of way is proposed through the site from Funtley Road (north) to Thames Drive (south).
- 2.12 The proposed landscape structure of the site will use existing features and will, through development, respect these and augment the landscape structure which is being eroded on this site.
- 2.13 The two green links will protect existing trees but will also use new tree planting in small copses, wetland and water and meadow planting to create a rich matrix which divides the site into roughly three development areas.
- 2.14 Funtley Road will be given a new landscape consisting of existing trees, new tree planting and seasonal and permanent water as part of the setting for new and existing development on Funtley Road.
- 2.15 The Ancient Woodland at Beamond Copse will be respected by a minimum 15 metre offset within which the influence of the replanted Ancient Woodland would be augmented; woodland edge tree planting, an informal mix of meadows and tree copses will provide an ecologically rich buffer.
- 2.16 The southern edge of the site is marked by existing important trees but also the change of level between relatively flat and relatively sloping land. This will contain a water catchment series of swales to produce a rich landscape for the ‘farmyard’ development parcels to look onto and to provide an ‘edge’ between the developed part of the site and the community park beyond.
- 2.17 This application was made in parallel with an application for the change of use of land to the south of the outline application site for it to become a Community Park following the demolition of existing buildings.
- 2.18 The Appellant lodged the appeal for the outline proposals on 24th September 2021, and on 2nd November 2021 the Planning Committee subsequently considered a report in which Officers recommended the application be refused (see **Appendix TB4**).
- 2.19 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.”

Appeal 2 – Community Park

- 2.20 That application seeks full planning permission for:
- “Change Of Use Of Land From Equestrian/Paddock To Community Park Following Demolition Of Existing Buildings”*
- 2.21 Although the Community Park scheme is submitted as a separate application it is not a ‘standalone proposal’; its delivery will be dependent on the permission being granted for the outline scheme.
- 2.22 The Appeal Scheme is near identical, except for slight reduction in site area, to one that was approved by the Council in 2018 (planning reference P/18/0066/CU). The Community Park comprises of an area of 9.89ha size
- 2.23 The Council’s recent assessment of open space provision within the Borough (Fareham Greenspace Study Addendum 2 – January 2014) (**CDH.35**), identified a surplus of natural greenspace Fareham North ward, which includes Funtley, but a shortfall in Parks & Amenity Open Space.
- 2.24 The proposal provides an opportunity to provide a significant quantum of additional open space through provision of a new community park, formal village green and amenity space that will assist in addressing the identified open space deficiency in this settlement area. A new and Locally Equipped Area of Play is also proposed.
- 2.25 These new resources will offer dog walking and other recreational opportunities on the doorstep of new residents. Also, significantly, these resources will offer recreation opportunities for existing residents of Funtley and the local area, attracting visitors who may otherwise use the designated sites for recreation purposes (e.g. walking, dog walking, cycling or running). Whilst it would be expected that new residents would also use other sites for recreation, it can be concluded that a significant proportion of walks (and dog walks in particular) would very likely be undertaken within the Community Park and other open space associated with the Appeal Site.
- 2.26 The Community Park will include large areas of freely accessible grassland where dogs can be run off the lead. It will also have woodland, areas of scrub, trees and hedgerows. It will offer a natural and aesthetically pleasing place to walk and undertake other activities, all located in easy walking distance from the new homes and with connectivity to nearby housing settlements.
- 2.27 The Council's Ecologist and Natural England raised no objection subject to further details of how biodiversity mitigation and enhancement measures will be carried out and what management arrangements would be put in place. The Community Park would be the subject of a unilateral undertaking pursuant to Section 106 Agreement produced by the appellants as part of the appeals now lodged.
- 2.28 Appeal 2 was lodged on 8th October 2021, and on 2nd November 2021 the Planning Committee considered a report (**Appendix TB5**) in which Officers recommended that had the Council been able to determine the application it would have been permitted.

- 2.29 The Committee Report (**Appendix TB5**) confirmed that *“Officers consider the proposed change of use to be an acceptable form of development in the countryside. There are no materially harmful impacts arising in relation to matters such as highway safety, parking provision or ecology and biodiversity interests”*.
- 2.30 The Planning Committee resolved that, had Members been able to determine the planning application, they would have granted planning permission, subject a series of planning conditions. The agreed planning conditions have been submitted to the Planning Inspectorate.
- 2.31 The delivery of a new park will provide a significant public asset that will be available and accessible to the residents of Funtley and those within North Fareham. Alongside the provision of a substantial new community asset, the Appeal Scheme will also ensure the removal of the utilitarian and unattractive existing buildings and equestrian fencing and associated paraphernalia returning the site to a more natural state.
- 2.32 Whilst proposed as a separate stand-alone proposal, the Community Park is intended to serve as an associated benefit for the adjacent housing site where the applicant proposes up to 125 dwellings. Residents from that development as well as existing residents living on the north side of Funtley Road and elsewhere in the village would be able to travel to the site on foot.
- 2.33 As Appeal 2 is effectively supported by the Council, it is not envisaged that there is any need to consider it in detail in my evidence. This matter is considered within the Statement of Common Ground and the Inspector will be invited to allow Appeal 2, subject to appropriate planning conditions and a Section 106 Agreement.

3. The Development Plan

3.1 This section of my evidence considers the applicable policies from their development plan that are referenced in the reasons for refusal. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the development plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.

3.2 The first test, and the statutory starting point is whether the application is 'in accordance with the plan', which is a phrase that has been the subject of debate in the High Court in the context of Section 54A of the Town and Country Planning Act 1990.

3.3 In his judgment of 31 July 2000 (R. v. Rochdale Metropolitan Borough Council ex parte Milne), Mr. Justice Sullivan concluded as follows:

"...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan"..."

"For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein".

3.4 The Rochdale judgment is applicable to the interpretation of Section 38(6) of the 2004 Act such that the decision maker must reach a decision as to whether the proposal is in accordance with the development plan when it is considered as a whole, which position is set out below.

3.5 Such matters (the tensions between development plan policies) have more recently been considered in Corbett v Cornwall County Council 2020 EWCA Civ508 (Case No. C1/2019/2179) (April 2020). This judgment reaffirms the position that it is enough that the proposal accords with the development plan considered as a whole, such that a proposal does not have to accord with each and every policy therein in order to be development plan compliant.

3.6 I firstly identify the relevant development plan documents, then the relevant development policies and consequently consider the compliance of the Appeal Scheme to them. Finally, I consider each of the stated reasons for refusal.

Fareham Borough Council Development Plan

3.7 The statutory development plan comprises the adopted **Local Plan Part 1: Core Strategy (August 2011) ('LPP1')**, the **Local Plan Part 2: Development Sites and Policies (June 2015) ('LPP2')**, and the **Local Plan Part 3: The Welborne Plan ('LPP3') (June 2015)**.

3.8 LPP3 relates only to Welborne, to the north of Fareham and although it is located close to the Appeal Site, the policies in this plan are generally not considered relevant to this application, albeit clearly a new settlement will be delivered close to the Appeal Site.

Fareham Local Plan Part 1: Core Strategy ('LPP1')

- 3.9 The Fareham Borough Core Strategy ('LPP1') was adopted on 4 August 2011 and as such pre-dates the publication of the National Planning Policy Framework (2012) and the more recent 2021 version. It was prepared to be in general conformity with the now revoked South East Plan (May 2009) and sets out a housing requirement for the period 2006 to 2026. It defers site allocations to subsequent DPDs.
- 3.10 With regard to the adopted Local Plan Policies listed, the following policies are considered relevant to this appeal:
- **Policy CS2: Housing Provision** seeks to deliver 3,729 new dwellings between 2006 and 2026, excluding at Welborne. The policy sets out the strategy for providing housing which includes a number of previous permissions and allocations as well as some new allocations. The policy states that priority will be given to the reuse of previously developed land within the existing urban areas and that the Annual Monitoring Report will inform the pace of housing delivery. Development will achieve a mix of different housing sizes, types and tenures.
 - **Policy CS4: Green Infrastructure, Biodiversity and Geological Conservation** states that development proposals will be permitted where Green Infrastructure provision in accordance with the Green Infrastructure Strategy has been integrated within the development where this is appropriate. Development proposals will provide for appropriate access to greenspace for informal recreation to avoid adverse impacts from recreation and other impacts on European and Ramsar sites and on nationally and locally important sites.
 - **Policy CS5: Transport Strategy and Infrastructure** seeks to deliver development in accessible locations and is permissive of development that delivers appropriate highway measures without adversely affecting the operation and safety of the highway network.
 - **Policy CS6: The Development Strategy** seeks to focus development on previously developed land within urban settlement boundaries. It also restricts development which would have an adverse effect on European conservation sites.
 - **Policy CS14: Development Outside Settlements** seeks to restrict built development outside of settlement boundaries in order to protect the countryside and coastline.
 - **Policy CS16 Natural Resources and Renewable Energy** set out the sustainable development and energy efficiency principals and requirements for new buildings and spaces, including sustainable transport measures.
 - **Policy CS17: High Quality Design** requires proposals to be of high quality design drawing on urban design and sustainability principles to create quality places.

- **Policy CS18: Affordable Housing** which requires 40% affordable dwellings on developments that can accommodate 15 or more dwellings, subject to viability considerations.
- **Policy CS20: Infrastructure and Development Contributions** sets out guidance on development contributions.
- **Policy CS21: Protection and Provision of Open Space** seeks to protect existing open space and sets out requirements for open space in new developments.

Fareham Local Plan Part 2: Development Sites and Policies Plan ('LPP2')

- 3.11 The Development Sites and Policies ("DSP") DPD (Local Plan Part 2) was adopted in June 2015 and allocates sites and land for housing.
- 3.12 The following policies are referenced in the Council's reasons for refusal:
- **Policy DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries** sets out a presumption against new residential development in locations outside of the Defined Urban Settlement Boundaries. *Proposals 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.*
 - **Policy DSP13: Nature Conservation** states that development should protect designated sites, habitats and protected species and their habitats, and should not fragment biodiversity networks. *Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that impacts are outweighed by the need for, and benefits of, the development and that adverse impacts can be minimised and provision made for mitigation and, where necessary, compensation for adverse impacts.*
 - **Policy DSP 15: Recreational Disturbance on the Solent Special Protection Areas** seeks to protect designated European ecological sites, including the Special Protection Areas (SPA) of the Solent coastline, from increased recreational disturbance as a result of new housing development.
- 3.13 Of particular importance to this appeal is **Policy DSP40: Housing Allocations** which allocates land for housing development, but also sets out criteria where housing development would be permissible in the absence of a demonstrable five-year housing land supply, as is the case at this time. I consider this particular policy in some detail in the following section.

3.14 The criteria are set out below:

- (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. It includes Policy DSP40 which allows for additional housing sites outside the defined settlement boundaries where the Council does not have a five year supply of deliverable housing land and where the scheme satisfies the five criteria set out in the policy.**

3.15 I note that Policy DSP40 expressly accepts the possibility of development occurring outside of identified settlement boundaries, and has occurred with the granting of the 2020 Consent, provides a framework on which to assess the acceptability of the Appeal Scheme. Accordingly, notwithstanding any prima facie conflict with other policies within the development plan, if the Appeal Scheme is found to accord with Policy DSP40 then it follows that it must be regarded as complying with the development plan when read as whole.

3.16 I consider that in this case the following are the *“policies which are most important for determining the application”*:

- ***Policy CS6: The Development Strategy;***
- ***Policy CS14: Development Outside Settlements;***
- ***Policy DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries; and***
- ***Policy DSP40: Housing Allocations.***

Scheme compliance with LPP2 Policy DSP40

3.17 Consequently, and rather than reviewing the stated reasons for refusal in detail, I firstly turn to Policy DSP40 of the LPP2. As I have noted, Policy DSP40 of LPP2 provides flexibility in the event of a shortfall in the five year housing land supply position. This was included as a result of the examination of the policy through the hearing sessions which addressed concerns about the lack of flexibility in relation to the supply of housing land.

3.18 This is the case for this appeal. I submit that the scheme accords with the development plan when read as a whole particularly as, for example, compliance with Policy DSP40 necessarily allows some conflict with Policy CS6 (and other policies).

3.19 I note that paragraph 47 of the Local Plan Inspector's Report (May 2015) (**CDE.4**) states as follows:

"Paragraph 14 of the NPPF refers to the need for local plans to incorporate sufficient flexibility to adapt to rapid change. Currently LP2, for example policy DSP40 on Housing Allocations and its supporting text, does not provide any indication of how the Council would respond in circumstances where the predicted level of housing delivery is not being achieved. Consequently it is proposed by the Council to strengthen this element of LP2 by explaining that in principle additional housing sites may come forward if it can be satisfactorily demonstrated that the Council does not have a five year land supply when assessed against the Core Strategy housing targets. New explanatory text is proposed and the policy would be modified to include the criteria against which any such proposal would be assessed. This is a pragmatic and positive way forward and will contribute to ensuring that LP2 is justified, effective and consistent with national policy. MM21 is therefore recommended."

3.20 It is clear that the amendments to the wording of Policy DSP40 (as set out in the adopted Local Plan Part 2) were explicitly required in order to ensure that the development plan was effective and consistent with national policy. It was also required to deal with the likely housing supply shortfall which has now come to pass.

3.21 As set out in the above section, in the absence of a 5 year housing land supply this engages policy DSP40, which it is agreed by both parties, operates as an exception to the otherwise restrictive policies that drive the spatial distribution of housing, subject to its own five criteria. It is agreed that these five criteria set tests less restrictive than the policies to which it acts as an exception.

3.22 This is highlighted in paragraph 15 of the **"Newgate Lane North and South"** appeal decision (Reference: APP/A1720/W/20/3252180 and APP/A1720/W/20/3252185 dated 8th June 2021) (**Appendix TB6**), which states:

"Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight

attributable to conflicts with those more restrictive Policies would be reduced and would outweigh by compliance with LP2 and Policy DSP40."

- 3.23 It follows that if the development passes all five criteria of DSP40, then it accords with the development plan taken as a whole. For the reasons set out in my evidence, I consider that the development does meet all five criteria of DSP40 and therefore, is in accordance with the development plan as a whole.
- 3.24 In the recent November 2021 Committee Report (at **CDC.1** and also my **Appendix TB4**) relating to the Appeal Scheme, it was similarly found to be in accordance with many of the component parts of DSP40. This confirmed full compliance with DSP40(i), and DSP40(iv). However, the Council alleges breach of criteria (ii), (iii) and (v) of DSP40. I disagree.
- 3.25 The 2020 consent was considered against the five criteria of the policy DSP40. It was found that the proposal fully 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.
- 3.26 I note that at paragraph 8.53, the recent November 2021 Committee Report states that:

"... Officers consider there to be some conflict with Policy DSP40(ii) in that the proposal for 125 dwellings would not be sustainably located. Officers do accept however that the degree of conflict with the policy in this particular instance would not by itself be sufficient to lead 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. The Planning Balance section is to be found towards the end of this report." (my emphasis)

- 3.27 Further, paragraph 8.76 states that:

"With the above observations in mind, Officers have concluded 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. On that basis, the harm would not be minimised in accordance the requirements of Policy DSP40(iii)." (my emphasis)

- 3.28 Finally, I note that at paragraph 8.84 the Report contends that:

"there are unacceptable environmental impacts arising from the failure to provide appropriate and appropriately secured nitrate mitigation leading to adverse effects on the integrity of PS as set out earlier in this report. As a result the development does not meet the requirements of criteria (v) of DSP40." (my emphasis)

- 3.29 I respond to each of these assertions in my assessment below. I also note that it has been stated in recent appeal decisions that, given the continued inability of the Council to demonstrate the required 5YHLS, that the criteria of DSP40 may be too restrictive or the LPA may be applying the criteria too restrictively.

- 3.30 I note that paragraph 46 of the “**Newgate Lane East**” appeal decision (Reference APP/A1720/W/21/3269030 dated 28th July 2021 (**Appendix TB7**), for a site that sits within a Strategic Gap) states:

“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.”

- 3.31 Paragraph 110 of that appeal decision states:

“Thirdly, criteria (ii) and (iii) [of DSP40] 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)”. (my emphasis)

- 3.32 Finally, the very recent decision on land within an existing strategic gap at “**Land East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham, PO14 2TF**” proposals (Reference APP/A1720/W/21/3275237) (**Appendix TB8**) is particularly pertinent to how Policy DSP40 should be applied.

- 3.33 The Inspector states at paragraph 9 that the Core Strategy “*predates the Framework and so is not based on an up-to date Framework complaint assessment of housing needs. The housing requirement has not been reviewed within the last 5 years. Policy CS2 and CS6 cannot therefore be considered to be up to date. In addition, policies CS14 and DSP6 are derived from settlement boundaries which are based on an out of date housing requirement and this reduces the weight I can attribute to them.*”

- 3.34 The Inspector then turns to Policy DSP40, and states that:

“11. Policy DSP40 allows for additional residential development where a 5YHLS cannot be demonstrated subject to various criteria being met. By seeking to find additional housing sites, and by accepting that development can, in appropriate circumstances, take place outside settlement boundaries, it must follow that compliance with Policy DSP40 would outweigh conflict with policies CS2, CS6 and CS14 of the CS and DSP6 of the LP. I return below to DSP40 and the criteria within it.” (my emphasis)

- 3.35 In drawing together her conclusions, the Inspector brings her conclusions together at paragraph 70 and states that:

“70. The development would conflict with policies CS2, CS6 and CS14 of the CS and DSP6 of the LP due to its location outside a defined settlement. However, although it would lead to some localised harm to the character and appearance of the countryside, it would nonetheless comply with policy DSP40, which is to be applied in circumstances where the aforementioned policies have failed to deliver an adequate supply of housing in the district. Having regard to the impetus in the Framework to significantly boost the supply of housing, and the aims of DSP40, I am satisfied that conflict with CS2, CS6, CS14 and DSP6 is outweighed by compliance with DSP40.”

- 3.36 This is the approach I have taken in my evidence. As concluded at recent appeals in Fareham Borough, if there is compliance with all five criteria of DSP40 when read fairly and proportionately, the development should be regarded as being in accordance with the development plan taken as a whole. LPP2 policy DSP40 expressly sets out contingency measures to allow greenfield sites, such as the Appeal Site, to come forward in circumstances that the Council cannot demonstrate a five-year housing land supply.
- 3.37 In the following section, I have considered this current Appeal Scheme against the five criteria of policy DSP40, and undertake my own assessment, drawing on the evidence of others and the application documentation as relevant.
- 3.38 However, I must note that insofar as DSP40 is also one of the ‘most important’ policies that too is rendered out of date by the operation of paragraph 11(d) of the NPPF.
- 3.39 My assessment in the following section and planning balance has been informed by the evidence put forward by Mr. Rummey (Design and Landscape), Mr. McMurtary (Highways), Mr. Goodbun (Ecology) and Mr. Brown (5YHLS and Affordable Housing Need).

(i) The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall

- 3.40 The Appeal Scheme would provide up to 125 new homes which is relative in scale to the shortfall (which is now significant) and it would make a positive contribution towards the housing land supply on a site that already benefits from an extant consent.
- 3.41 This is agreed by the Case Officer, whom in assessing the Appeal Scheme, confirmed at paragraph 8.46 in the Committee Report that:

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

(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

3.42 Reason for refusal (b) reads:

“The proposal would not be sustainably located.”

- 3.43 Mr. McMurtary has dealt comprehensively with the Appeal Site’s accessibility to a range of services and facilities by sustainable travel modes in his evidence. I support his conclusions in respect of the sustainability of the site for the scale of development proposed.
- 3.44 However, firstly on this matter, I note that there was no objection to the Appeal Schemes from the local highway authority (Hampshire County Council – “HCC”). They provided a formal response to the application and confirmed that subject to the appropriate legal agreement to secure the agreed mitigation package, there are no reasons on either sustainable accessibility or highway and transport grounds to refuse the Appeal Scheme.
- 3.45 They are not appearing at this inquiry and consequently a separate ‘*Agreed Statement on Transport Matters Statement of Common Ground dated 7th January 2022*’ between the Appellants and Hampshire County Council as highways authority has been prepared (**CDD.4**). It is hoped that a separate SoCG can be agreed on transport matters with FBC, who were unable/unwilling to sign document **CDD.4**.
- 3.46 **CDD.4** presents all areas of agreement on Highway and Transport Matters, which are facts, forecasts and assessments that are not in dispute, between the local highway authority and the Appellants. It includes analysis of accessible services and amenities within the vicinity of the Appeal Site. This analysis demonstrates to the satisfaction of HCC that the Appeal Site has reasonable accessibility to key local facilities on foot or by bicycle.
- 3.47 It is my view that the Appeal Scheme is sustainably located by virtue of its emerging allocation for residential development (HA10) in the Publication Local Plan 2037 and by the granting of the 2020 consent for 55 homes and for the reasons set out in Mr. McMurtary’s evidence.
- 3.48 The site has been considered by the Council as sustainability located, and the additional benefits of the Appeal Scheme are set out below. As has been noted elsewhere in my evidence, and that of Mr. Rummey, there is no justification for the Council considering that 55 dwellings is the ‘correct’ number of dwellings for this site. Indeed, the Council’s external landscape consultant in his last response accepted that’s the site could yield more than 55 dwellings.
- 3.49 The appeal site is located to the west of the village of Funtley, and north of the M27 motorway. The M27 provides access towards Portsmouth and the A3 to the east, as well as the M3 and Southampton to the west. The A3 and M3 both route from the south coast to London. Mr. McMurtary’s evidence deals with this matter in detail but I draw attention to some specific characteristics and opportunities.

- 3.50 Fareham town centre is located approximately 3.2 kilometres south-east of the site. The site is bound to the north by Funtley Road, to the south by the M27 motorway, by Honey Lane to the west, and by woodland/ a railway line to the east.
- 3.51 The closest bus stops to the site are located outside the site on Funtley Road. The proposals will facilitate the ongoing service to Funtley by way of the bus contribution, as agreed with HCC, and the provision of the bus turning areas within the site. I note that at the time of the determination of the 2020 Consent there was no bus service operating at that time as it had been re-routed away from Funtley by the bus operator. Officers concluded, inter alia, that the provision of the proposed new bridge crossing was sufficient to regard the site as being sustainable at that time. That has of course now been implemented and is open for use.
- 3.52 The railway station nearest to the site is Fareham, approximately 3.5 kilometres south in Fareham town centre. Fareham railway station is accessible by bus and cycle, as described above. The station is operated by South Western Railway (SWR) with their services as well as the Great Western Railway (GWR) service to Cardiff Central and the Southern (S) service to London Victoria serving the station.
- 3.53 The principle local destinations that residents may travel to are detailed within the submitted Transport Assessment (**CDA.5**) at Tables 3.3 – 3.7. The accessibility of some of these amenities have been improved by the opening of a new pedestrian and cycle route across the M27 bridge. This is expected to be adopted as a right of way to pedestrians and cyclists. There is a range of local amenities within acceptable walking and/or cycling distances of the site, including:
- *Infant, junior, primary and secondary schools;*
 - *range of local employment locations, including several business/trade/industrial parks;*
 - *Health facilities within walking distance of the site in the form of a doctor's surgery, a dentist and a pharmacy; and*
 - *Retail facilities, including a co-op food store.*
- 3.54 The detailed evidence of Mr. McMurtary, alongside the Agreed Statement on Transport Matters Statement of Common Ground (**CDD.4**) with HCC, highlights the opportunities for sustainable travel and access to facilities and services for future residents.
- 3.55 I consider that the construction of 125 new homes will positively contribute towards creating benefits and opportunities to support the vitality of the village. There will be direct local employment opportunities as well as indirect benefits through the demand for goods and services to support the construction phase. Further, there will be an increased local use of retail and other services, which will support the viability of local businesses. In addition, the Council will benefit from Council Tax revenues and the New Homes Bonus, both of which will contribute to Council revenue and supporting their service provision.

- 3.56 I have not seen any evidence to substantiate claims by third parties that the Appeal Scheme would give rise to unacceptable impacts on education and health services, as I note that there are no outstanding objections from the relevant providers, and the Section 106 Agreement would provide for mitigation towards any necessary infrastructure.
- 3.57 I consider that the Appeal Scheme would help to support and maintain the viability of existing facilities and services in the village, as well as encouraging new ones through increased patronage, and consequently benefits the vitality of the village as a whole.
- 3.58 In addition to these existing and proposed opportunities, it is pertinent that the Appeal Site lies close to the western boundary of the new garden village of Welborne, as allocated in the Local Plan, which will be approximately 300 metres north-east of the site (as the crow flies).
- 3.59 The new garden village will be a mixed-use development comprising of up to 6000 new homes, a secondary school, public open space, a community hub, a local centre and a district centre. The indicative Masterplan for Welborne is shown on the **Map TB1** below. The Appeal Site is identified in red on the plan.
- 3.60 The scale of this new garden village is such that improvements to the local transport infrastructure will be included in the scheme, from which this proposed development in Funtley will also benefit.
- 3.61 As previously stated, it must be noted however that the appeal site is sustainable in its own right. It is not reliant upon the additional facilities offered by Welborne Garden Village, but will improve access to facilities further still.

Map TB1: Indicative Masterplan for Welborne Garden Village (Combined Appeal Sites in red)



- 3.62 Turning back to the current proposals, it is a significant material consideration that the Appeal Site benefits from outline planning consent for a residential development of 55 dwellings (planning application reference: P/18/0067/OA). Whilst officers determined to grant planning consent in 2018 subject to a Section 106 agreement being prepared, formal consent was not granted until August 2020. The planning consent included a number of highway mitigation measures.
- 3.63 The Case Officer's Committee Report for the approved 55 unit scheme (the 2020 Consent) confirmed that in relation to the second test of Policy DSP40, Officers consider the package of measures proposed by the applicant to materially improve the sustainability of the location, even though the bus service had been rerouted away from Funtley at that stage. As I have detailed above, a different view is now expressed for the Appeal Scheme.
- 3.64 The Officer's Report to Committee for the 2020 consent scheme (dated 18/07/2018) stated on page 15:

"b) Sustainable transport links

The application further proposes significant benefits in the form of improvements to sustainable transport links which would be enjoyed not only by occupants of the new houses but also by existing residents of Funtley. The main improvement proposed is the public right of way for pedestrians and cyclists to be formed through the site and the adjacent land to the south where the Community Park is proposed and over the M27 bridge to the urban area of Fareham beyond. This is considered by HCC Highways and Officers of this Council to be an essential element of the proposal, delivering sustainable transport links to the site in order to make the development acceptable in planning terms.

The provision of these improvements can be secured through appropriately worded planning obligations in a Section 106 legal agreement."

- 3.65 The Case Officer confirms on page 17 of the Committee Report that:

"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."

- 3.66 As such the Council has already established that the site is sustainable and the mitigation measures would satisfactorily address the issue of accessibility. The Appeal Scheme seeks to increase the housing numbers from the approved 55 units to up to 125 units. A number of documents and plans were submitted in support of the application. This included the following:

- *Transport Assessment (CDA.5);*
- *Travel Plan (CDA.6);*
- *Non-Motorised User (NMU) Audit (CDA.30);*
- *Highway Response Notes (dated 15 March 2021 and 7 September 2021) (CDA.32 and CDA.42);*
- *Proposed Footway Improvements Plan (Drawing Reference 1908016-04A) (CDA.40); and*
- *Proposed Site Access Junction Plan (Drawing reference 1908016-01C) (CDA.37).*

3.67 It is quite clear to me that there are additional benefits proposed alongside the Appeal Scheme than were proposed at the time of the 2020 Consent. Mr. McMurtary's evidence deals with these in detail, but in summary the Appeal Scheme proposes the following highway benefits:

- *To secure provision of a pedestrian and cycle public right of way through the site from Funtley Road (north) to Thames Drive (south); associated works to upgrade the bridge over the M27 motorway (including structural survey) and commuted sum for future maintenance;*
- *To secure a financial contribution toward the revision of the existing traffic regulation order (TRO) to allow the speed limit restrictions on Funtley Road to be amended (£5,000); and*
- *Provision of a site access onto Funtley Road as indicated in Drawing No. 1908016-01 Rev E, including both vehicular and pedestrian provision;*
- *£50 of bus vouchers per home;*
- *£150 per home towards the cost of a new bike(s);*
- *Visibility splays of 2.4m by 60.6m and 2.4m by 62.3m in the eastern and western directions respectively as shown on Drawing No. 1908016-01 Rev E which are to remain clear of all obstruction and vegetation greater than 0.6m in height at all times;*
- *Footway widening and vegetation clearance works along the footpath on Funtley Road, as indicated in Drawings 1908016-02 Rev B and 1908016-03 Rev A;*
- *A contribution of £5,500 per annum towards the bus provision down Mayles Lane up to a maximum of 5 years, with contributions to cease once bus routing is amended and operational internal to the site;*
- *A contribution of £67,133 towards Public Right of Way improvements between the site and Henry Cort Community College;*
- *A Residential Travel Plan, supported by payment (by developer) of HCC fees in respect of approval (£3,000) and monitoring (£15,000) of the Framework Travel Plan prior to commencement;*
- *Provision of a bond, or other form of financial surety to the value of £28,750 in respect of the measures within the Residential Travel Plan; and*
- *A contribution of £42,000 towards the implementation and monitoring of the School Travel Plan (to replace the £15,000 contribution secured under planning approval P/18/0067/OA).*

- 3.68 Hampshire County Council (HCC) as Highways Authority provided an updated consultation response on 7th December 2021. The consultation response confirms the following:

"The Transport Assessment (TA) lays out walking distances to education, employment, retail, and health facilities. These have been checked and confirmed to be actual walking distances and not "as the crow flies" distances and are therefore acceptable. It is noted that whilst a significant number of services lie beyond the 2km walking distance recommended by CIHT, there are some facilities from each category within this distance.

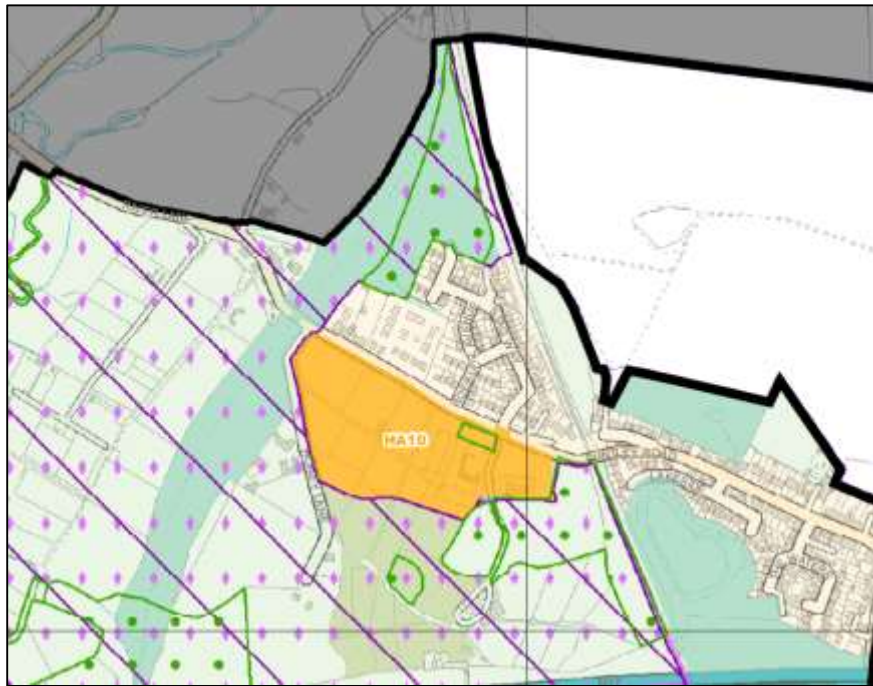
Pedestrian facilities along Funtley Road are currently secured to be improved by planning permission P/17/1135/OA. This application proposes to tie in with the existing pedestrian network, and provide crossing points to the northern side of Funtley Road, which will provide onward connections towards the facilities at Knowle village....

... The applicant has provided sufficient information to address points previously raised. The highway authority raises no objection to this application, subject to condition and obligations."

- 3.69 I consider that the Appeal Scheme would help to support and maintain the viability of existing facilities and services in the village, as well as encouraging new ones through increased patronage, and consequently benefits the vitality of the village as a whole.
- 3.70 The Appeal Scheme accordingly complies with the NPPF policy and the Council's own stated objectives on the benefits provided by services and facilities, which form part of the development plans stated objectives relating to the achievement of sustainable development. I consider that this benefit should be given moderate weight in the determination of the Appeal Scheme.
- 3.71 I note that neither the NPPF nor any policies in the development plan place an absolute requirement to prevent all car use, but effectively require the decision maker to consider the potential to limit future car use. Mr. McMurtary considers this matter in some detail, and I note that the Highways Authority have not objected to the Appeal Scheme, and indeed, have signed an '*Agreed Statement on Transport Matters Statement of Common Ground*' (**CDD.4**).
- 3.72 Whilst 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, the site is adjacent to the housing development on the north side of Funtley Road, including the recently approved and implemented Funtley North scheme for 27 dwellings that was secured by the Appellant. The Appeal Site is adjacent to an area which, for all intents and purposes bears all of the characteristics of the urban area.
- 3.73 Whilst full weight cannot be given to the Proposals Map of the emerging Fareham Local Plan 2037 at this time, it is noted that the land to the north of Funtley Road is proposed to be included within the defined urban settlement boundary.

- 3.74 Indeed, so is the Appeal Scheme itself, which is identified in orange as a housing allocation site (Policy HA10) (note that all of the development parcels falls within the proposed allocation area).
- 3.75 The 'white' area identified on **Map TB2** below, is Welborne Garden Village, as exemplified in the illustrative masterplan included **Map TB1** above. This strategic allocation site was recently granted outline planning permission for a mixed use development with up to 6,000 new homes.

Map TB2: Extract from the Publication Local Plan 2037 (Policies Map)



- 3.76 Given the significant scale of development proposed in the LPP1 at Welborne, I question the rationale of the Council's case in this regard when it has clearly considered this broad location suitable for development at considerable scale. Indeed, this and other future developments in the locality will further enhance the provision of and investment in sustainable transport facilities, thus creating the potential for further change and improvement over time. The Welborne proposals will include new facilities and services within walking distance of the Appeal Site, and should include a step change in public transportation provision for the area.
- 3.77 In this context I must recognise that the future residents of the homes on the Appeal Scheme will be reliant on the private car to an extent, but not to any degree that would represent a significant level of identified harm, especially given that Funtley is identified as a sustainable location for additional housing in principle in the development plan.
- 3.78 As Mr. McMurtary's evidence notes, any such 'harm' can and will be mitigated through the proposed sustainable transport measures and improvements put forward by the Appellants. There are no objections to the Appeal Scheme from the highways authority.

- 3.79 I consider that consequently the Appeal Site is therefore located in an accessible location, which will not be solely reliant on private car use. I also note changing patterns of vehicular use since the outbreak of the COVID-19 pandemic and the increased adoption of home working. With the introduction of new and improved bus services (which effectively 'saves' the bus route for existing residents too), alongside the substantial development proposed at Welborne, I would expect a significant modal shift over the coming years, in part due to the investment being committed by the Appellants.
- 3.80 In this context I conclude that the Appeal Scheme contributes to maximising opportunities for sustainable transport. I recognise that opportunities exist that will enhance the sustainability credentials of Funtley.
- 3.81 Although the immediate delivery of Welborne is currently unclear, given that it forms the central plank of the LPP1, when it is delivered the context for the Appeal Site will change quite significantly, particularly noting the 'pump primed' requirements of a number of these infrastructure schemes. Future residents of the Appeal Site will benefit from improvements and associated significant investment in bus services.
- 3.82 The Appeal Scheme provides 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.
- 3.83 Further highway improvements are proposed between the Appeal Site and the surrounding area. This will provide better connectivity, by not only promoting journeys on foot from the Appeal Site but also integrating the Appeal Site with the urban area of Funtley. Hampshire County Council Highways Authority have raised no objection to the Appeal Scheme.
- 3.84 A Design and Access Statement, Parameter Plans and Illustrative Masterplan were submitted in support of the scheme, which is submitted in outline form, but with extensive commentary and explanation of the design rationale. The proposal is of course subject to a degree of flexibility given that the proposal is for 'up to' 125 dwellings, allowing detailed consideration at reserved matters stage and the ability for the Council to insist on a lower dwelling number if they do not consider that their development management policy criteria cannot be met.
- 3.85 Mr. Rummey in his Proof of Evidence demonstrates the eclectic nature of Funtley's settlement character. It has no definitive centre and a sprawling low density nature, dominated by its roads and parking. The built form is suburban with largely standardised house types separated by minimum visibility and garden size distances. Roads are of standard and constant width adding to the sense of ubiquity. Older areas have been heavily altered and infilled but retain well screened front gardens. Newer estates on cul de sac layouts lack distinctive architectural qualities and often back onto public space.
- 3.86 Distinct ribbon developments of 2 and 3 storey mostly tightly set to street edge with occasional key house set back in gardens. Streets focus on a key space in the village

such as a green, a watercourse or a Y-junction with small green that provides a full stop to a route.

- 3.87 The Appeal Scheme will provide a transition between the suburban and undistinguished character of the existing settlement with the more identifiable character of the Meon Valley settlements.
- 3.88 The Illustrative Masterplan and Design and Access Statement demonstrates variety in road width, linear green spaces with views to higher ground, small squares, key buildings terminating views to break down the suburban form. A consistent small range of materials and variety of roof plans, linking buildings and outbuildings also prevent any sense of standardisation in layout or form.
- 3.89 The development mixes small and large plots and in places uses terraces and farm court layouts characteristic of the area along its edge to provide a strong connection to the landscape beyond.
- 3.90 Mr. Rummey in his Proof of Evidence provides a further more detailed Layout Plan of the Appeal Scheme. This is to demonstrate that up to 125 dwellings can be acceptably delivered on the site, whilst achieving a high standard of design. As such, it is my view that the Appeal Site satisfactorily meets the second test of Policy DSP40.

(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

- 3.91 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.”
- 3.92 It is the Council’s case that the proposed development would fail to be sensitively designed to reflect the settlement character of the neighbouring settlement of Funtley. The Council in their Statement of Case at paragraph 9.20, have stated:

“Most 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”.
- 3.93 The Appeal Site and surrounding areas do not lie within an existing designated landscape or a Strategic Gap. That is clear from the adopted Proposals Map and development plan.
- 3.94 My **Appendix TB9** includes a plan prepared by Mr. Rummey which identifies the proposed developable area of the Appeal Scheme and the approved developable area of the 2020 Consent. It also includes the draft Proposals Map from the Emerging Local Plan, and demonstrates that both proposals fall wholly within the area proposed within the draft allocation HA10.

- 3.95 The evidence of Mr. Rummey considers this matter in some detail, but I do note that there is no discussion relating to the site being considered as a 'valued landscape' in relation to the 2020 consented scheme, or in the Committee Report for the Appeal Scheme. This willingness to accept development on the site was compounded in 2020 by the grant of planning consent for a 55 unit scheme, on the same land, the same site, and the same landscape as is now being suggested as 'valued'.
- 3.96 Since the concept of a 'valued landscape' is inherent to the site's innate landscape qualities it is surely inconsistent to apply the term to a proposal for 125 units where it was not applied to a scheme on the same site for 55 units; where the principle of development is agreed through a draft allocation, and now through the grant of planning permission.
- 3.97 At no time was the term valued landscape mentioned during these processes; except by the external landscape consultant in his initial response, before he had actually visited the site. It is not referred to within the November 2021 committee report and neither is it referenced in the reasons for refusal for this appeal.
- 3.98 As I have noted, consent for development on this site has already been granted and whilst there may be debate about the manner of development, landscape and architectural design, the land use is established and the fact that the Council did not regard this as a valued landscape is clear. It also benefits from a draft allocation.
- 3.99 There is no clear definition of a 'valued' landscape in the National Planning Policy Framework (NPPF) but case law recognises that there is a difference between 'designated' landscapes (AONBs, National Parks etc) and 'valued' landscapes. The term 'valued landscape' assumes that the landscape has some special 'out-of-the-ordinary' physical attributes to justify this term, rather than just popularity.¹
- 3.100 I am mindful that the Council may seek to rely on their emerging Local Plan regarding landscape matters, and the Appellant reserves the right to comment on that in due course upon receipt of evidence. However, I am also mindful of an email I received on 14 February 2020 (my **Appendix TB10**) from the Council's Planning Policy team relating to the Council's evidence base relating to the draft 'Proposed Areas of Special Landscape Quality' in the emerging Local Plan.
- 3.101 Mr. Rummey covers this matter in his evidence, but I note that the Council states that the *"areas of special landscape quality in the draft local plan supplement are indicative and form part of the consultation. It is important that these areas are accurately defined and as such we would value your views on this in the form of a consultation response."* We await the Council's evidence on this matter and may comment further, given the acknowledged shortcomings of the evidence base at that time.
- 3.102 Turning to site specifics, the current use of the Appeal Site is for paddocks with a network of fencing, replacing the simple field pattern. The tree cover within the copses and treebelts on the periphery of the site remain. However the mature trees within the site are significantly reduced, with only a few remaining mature trees marking the historic north-south hedge lines which linked the woodland on the ridge to the valley

¹ *Stroud DC vs. SSCLG, 2015, EWHC 408*

floor, and which was so obvious on the 1898 map. The scrub area on the middle slopes appears to have been subsumed into a grass paddock. The small horse paddocks are now defined by a proliferation of post and rail fencing, which, together with hard surfaced areas, stables, large modern steel framed agricultural barns, menage and other clutter contribute to the 'scruffy appearance' and 'fringe character' identified within Fareham Borough's landscape character assessment.

- 3.103 This landscape has been in transition for the past 120 years or more, undergoing a gradual incremental, process of degradation. Funtley triangle was created by the mainline railway to Fareham, from the downland landscapes to the north in Victorian times. It was then severed from the Meon Valley, by the Deviation Line, in the early 20th century, and the treebelts that have developed on the railway embankment have further reinforced this isolation. Further isolation occurred in the mid-20th century, when the M27 was constructed to the south, whilst the landscape was affected successively by clay extraction and the brickworks, by the abattoir and later by the advent of housing on the brownfield land north of Funtley Road.
- 3.104 Meanwhile the woodland at Great Beamond Coppice, which was partly cleared for clay extraction and also used as a landfill, was re-established as replanted Ancient Woodland, being the main survivor of the once extensive coppice woodland on the slopes and ridges. Pasture on the slopes and ridge south of Funtley Road was replaced by equestrian uses with the associated clutter of fencing, stables, modern agricultural barns, and a menage, as well as non-native planting including Leyland Cypress.
- 3.105 Tranquillity and perceptual qualities of the landscape are also important in understanding landscape change. Tranquillity relates to physical and visual intrusion by man-made features but also relates to noise, light pollution and other perceptual qualities. The Funtley triangle is affected by the intrusion and noise of the M27 motorway and the active railway line that cuts a swathe through the landscape, particularly when carried by the prevailing wind. Infill development on Funtley Road has altered the local character of the lane due to adjacent residential development, associated lighting and signage, and edge treatments, so that there is an abrupt urban edge along Funtley Road, which also contributes to loss of tranquillity.
- 3.106 Future development at Welborne to the north will significantly alter the landscape context of the site further still, transforming the open downland landscape, which is prominent in views from the upper parts of the site, to that of a new settlement whose proposed landscape structure will take many years to mature. In summary, the landscape of the site and its surrounds has been undergoing change over an extended period and will continue to do so until it has a clear purpose established to secure its future. Whilst it was once open countryside closely associated with the Meon Valley, this is no longer the case.
- 3.107 Whilst there will be a discernible change in views for residents to the north of Funtley Road, which are likely to be more pronounced during construction, there is potential for long term benefits as the enhanced landscape matures within the site and the Community Park integrating development and providing significant amenity. The significant landscape improvements in the Community Park, including new tree planting and enhanced management of both the existing and new vegetation and

grasslands are assessed as beneficial to views and visual amenity. This change of use will also give public access so that users will be able to enjoy the panoramic views from the upper parts of the site, recreation opportunities and improved connections to and from Fareham North.

- 3.108 The Appeal Scheme proposes a comprehensive landscape structure which allows the remnant woodlands to be linked up with treebelts, new woodland and scrub areas so that the landscape once again flows through the valley floor, across Funtley Road and up to the southern ridge. These connections will also result in significant benefits for habitat enhancement and connectivity on the site, and for respecting and protecting the Ancient Woodland. This enhanced structure, using the existing remnant structure as its building blocks, will provide a better setting, which more closely reflects the characteristics of the area, and achieved in a shorter timescale than relying on a completely new landscape.
- 3.109 This resonates with Fareham's own Landscape Assessment, which states, as a general objective that *'it is paramount that the essential structure of the landscape remains evident for future generations.... as these give different parts of the Borough their own distinctive identity and sense of place.'*
- 3.110 Further detail on the design and landscaping approach to the proposals are contained within Mr. Rummey's Proof of Evidence. He considers that the landscape-led approach of the Appeal Scheme has taken a more proactive and positive approach to the 2020 consented scheme and seeks to create a residential development grounded in its landscape, which 'completes' the Funtley triangle settlement, repairs, restores and brings new life to the landscape.
- 3.111 The Appeal Scheme will be sensitively designed and reflect the character of the neighbouring area. As Mr. Rummey explains, this can be controlled through a subsequent reserved matters application(s) and the use of appropriate planning conditions. A landscape management plan is also proposed to be secured through planning condition, ensuring the longevity and vigour of the existing and proposed vegetation within the application boundary.
- 3.112 The potential landscape effects have been assessed at site level, at Borough level LCA and also at County and National character area level. Landscape effects are also assessed on landscape features. The proposal allows for replanting within carefully defined green links, based on the historic pattern so that these physically and visually connect the wooded slopes and horizons with the valley floor, as the FBC assessment recommends. The green links reinstate smaller scale landscape compartments for development and also reconnect habitats.
- 3.113 Coupled with additional planting throughout the development areas and around the edge of the site, this creates a connected and comprehensive landscape structure which complements the enhanced, biodiverse grasslands, woodland edge planting around the woodlands and tree planting within the Community Park.
- 3.114 There are also significant opportunities to enhance the landscape structure and so repair landscape character, enhance habitat connectivity, including within the

irreplaceable habitats of the Ancient Woodland, as well as improving visual amenity. Significant Biodiversity Net Gain is proposed, as explained by Mr. Goodbun.

- 3.115 I agree with Mr. Rummey's assessment of the Appeal Site, and agree that the Appeal Scheme has been sensitively designed to reflect the character of Funtley.
- 3.116 I consider that the proposed development would be capable of being sensitively designed to respond positively to the character of the existing housing development nearby. Albeit for more dwellings than previously approved or as proposed in the draft allocation, it is clear from Mr. Rummey's evidence that a higher number of dwellings can be accommodated on the site, whilst respecting the location and meeting necessary development management standards.
- 3.117 I therefore consider that the Appeal Scheme meets the third test of Policy DSP40 and also Policy CS4.

(iv) It can be demonstrated that the proposal is deliverable in the short term

- 3.118 Although the Appellant is an established house builder, with a track record of delivery, in this case it is likely that the proposal will however be delivered by a third party. The site at Funtley North, immediately adjoining the Appeal Site, commenced development swiftly following its sale to Vivid, and is already being occupied.
- 3.119 Given the scale of this proposal, the lead in time until first completions are considered to be minimal. Assuming that the Appeal is allowed in early 2022, it is envisaged that it would take circa 9-12 months for the submission of reserved matters, and then a further 9-12 months for development to commence, assuming no issues arise in the interim.
- 3.120 As such, our clients indicative delivery timetable, assuming that the appeal is allowed, is as follows:
- *Outline permission granted – March 2022*
 - *Submit RM's – by January 2023*
 - *LPA approves RM's – by June 2023*
 - *Estimated start on site – September 2023*
 - *1st occupation on site – June 2024.*
- 3.121 It is envisaged that the last occupation at the site would be in approximately March 2027, with the proposal being capable of delivering approximately 40 dwellings per annum. The delivery of the full 125 units is easily achievable within five years, and will make a meaningful contribution towards the Council's shortfall of deliverable housing supply (particularly affordable housing need). The proposal also includes 6 self or custom build plots, for which there is an identified need for in the Borough, as I consider below.
- 3.122 As such both parties agree that the Appeal Scheme accords with DSP40 (iv).

(v) The proposal would not have any unacceptable environmental, amenity or traffic implications

- 3.123 In terms of amenity, following grant of outline planning permission the detailed application(s) would need to ensure the dwellings are built in a manner which meets this Council's requirements in respect of light, outlook and privacy as set out in the recently adopted Fareham Borough Council Design Guidance (excluding Welborne) Supplementary Planning Document.
- 3.124 As indicated in the submitted Design and Access Statement, and expanded upon further in Mr. Rummey's evidence, careful design and boundary landscaping will help to mitigate any effects. It is considered that a scheme can be developed for the site which preserves the amenity of the area and nearby residents.
- 3.125 As I identified above, the only conflict against this criteria by the Council in its Committee Report was *"from the failure to provide appropriate and appropriately secured nitrate mitigation leading to adverse effects on the integrity of PS"*.

- 3.126 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."

- 3.127 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."

- 3.128 However, and as explained in the separate 'Ecology and Nature Conservation SoCG' (CDD.3), this conflict has been mitigated and therefore conflict with the limb of this policy must therefore fall away.
- 3.129 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. The increased levels of nitrates entering the Solent will have a likely significant effect upon the European Protected Site ('EPS').
- 3.130 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 requires all new housing development to provide for nitrate mitigation to address the effect of wastewater from dwellings on designated habitats.

- 3.131 A Nitrate Budget was submitted in support of the original outline planning application. Following consultation with FBC and Natural England, a revised Nitrogen Statement and Nutrient Budget were submitted by the Appellant on 24th September 2021.
- 3.132 The revised Nutrient Budget corrected errors 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 confirmed that they were satisfied with the conclusion that the scheme would need to mitigate against a surplus of 68.8 kgN/year that would be generated by the Appeal Scheme.
- 3.133 This has been calculated on the basis that up to 125 additional dwellings on 6.09ha of and, split between 3.6ha of 'urban' area and 2.49ha of open space, creates a deficit of 68.8kg of nitrogen per year (kgN/yr).
- 3.134 The proposed mitigation is to remove the land edged in red on the Change of Use (CoU) application drawings (P/20/1166/CU) out of its current use (paddocks (lowland grazing)) to mitigate this. The total area of the proposed new Community Park is 9.88ha. Within that area there is 6.78ha of lowland grazing i.e. the non-woodland area that will be taken out of use.
- 3.135 The consented 2020 scheme (ref P/17/1135/OA) already utilises 3.06ha of this mitigation land. Overall, this leaves 3.72ha of mitigation land available to mitigate the current nitrogen impacts arising from the planning application for 125 homes.
- 3.136 The Natural England Guidance (Version 5 – June 2020) recommends that for land used as horse paddocks, figures for lowland grazing should be used in nitrogen calculations. It sets out that the average nitrate-nitrogen leaching rates in kg/ha for Lowland Grazing is 13kg/ha/yr. The land would then be used for open space/greenfield, as proposed in the CoU application, has a leaching rate of 5kg/ha/yr.
- 3.137 The Appellant has an agreement with the Warnford Estate to purchase residual nitrogen credits (39.04kgN/yr) from their approved scheme (approved by Natural England and Fareham Borough Council).
- 3.138 The proposals are therefore balanced and nitrogen neutral, where the scheme creates a deficit of 68.8kgN/year and mitigation land and external credits provides 68.8kgN/year (29.76kgN/yr on-site and 39.04kgN/yr off-site). This matter is considered in detail in the '*Ecology and Nature Conservation SoCG*' (**CDD.3**).
- 3.139 A Section 106 Agreement is currently being prepared and will include securing the land being used at the Community Park for nitrate mitigation. It is proposed that the Council will be transferred the new Community Park and will therefore manage and control the on-site nitrogen mitigation land.
- 3.140 This addresses RfR(c) relating to the 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.

- 3.141 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).
- 3.142 The provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) require that prior to deciding whether to grant planning permission for development which is likely to have a significant effect on a European Site, either individually or in combination with other developments, then the competent authority must make an appropriate assessment of the implications for the European site. Consent should only be granted if there are no adverse effects on the integrity of the site, unless other legal tests have been met.
- 3.143 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.
- 3.144 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 'Protected Sites' (PS) (previously 'European Protected Site').
- 3.145 The Solent Recreation Mitigation Strategy (2017) is the relevant published strategy relating to the avoidance of adverse effects on European designated sites associated with the Solent (including those of relevance to this sHRA). The Solent Recreation Mitigation Partnership formulates, implements and monitors the strategy. Funding is through developer contributions transferred from the relevant local planning authorities as part of a cross boundary approach to mitigation.
- 3.146 The Partnership itself comprises Natural England, the Royal Society for the Protection of Birds (RSPB) and the fifteen Solent local authorities, including Fareham Borough Council.
- 3.147 The Solent Recreation Mitigation Strategy 2017 states that the baseline developer contribution is the equivalent of £564 per dwelling however, in practice this is charged on a sliding scale (based upon bedroom numbers per dwelling) in order to more accurately reflect the numbers of new residents likely to be generated. The costs outlined are as follows:

“£337 for 1 bedroom dwelling;

£487 for 2 bedroom dwelling;

£637 for 3 bedroom dwelling;

£749 for 4 bedroom dwelling; and

£880 for 5 bedrooms or more."

- 3.148 In order to address matters concerning recreational pressure on the Solent European designated sites, it is standard practice among the relevant local planning authorities to seek the appropriate level of financial contribution towards the Solent Recreation Mitigation Strategy. The contribution is secured through a legal obligation in the form of either a Unilateral Undertaking or Section 106.
- 3.149 The Appellants are committed to providing the relevant financial contribution, with this being secured through an appropriate legal mechanism. In this light it can be concluded that no adverse effect on the Integrity of the Solent European designated sites would arise, subject to the securing of the contribution and its payment ahead of first occupation.
- 3.150 Therefore, I maintain that RfR(d) is adequately addressed by a legal agreement and planning condition, and would be wholly compliant with the tests of section 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The provisions of policies CS4, DSP13 and DSP15 are therefore met.
- 3.151 It is my opinion both RfR (c and d) have been addressed through the following mechanisms:
- Nitrate credits have been secured with the Warnford Estate;*
 - Securing the Community Park land as nitrate mitigation secured through the S106 Agreement;*
 - To secure a financial contribution within the S106 Agreement towards the Solent Recreation Mitigation Partnership (SRMP) in order to mitigate the 'in combination' effects that an increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas; and*
 - Appropriately worded planning condition relating to SuD's.*
- 3.152 It is my view that the integrity of the designated habitats would be safeguarded. In this respect the Appeal Scheme would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP.
- 3.153 A Shadow Habitat Regulations Assessment (sHRA) has been prepared, as requested by the Inspector. This will assist the Competent Authority (in this case the Planning Inspector appointed on behalf of the Secretary of State) when applying the legal tests associated with the Habitats Regulations. This sHRA provides sufficient information for the Competent Authority to assess the implications of the Appeal Scheme on designated sites of nature conservation importance protected under the Habitats Regulations, and sites that are given the same protection in accordance with advice in the NPPF (2021), and therefore the tilted balance still applies.

- 3.154 This has been formally submitted to the Council and Natural England (see Mr. Goodbun's appendices).

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

- 3.155 In July 2021, Natural England submitted a consultation response to the Council's Regulation 19 Local Plan Consultation.
- 3.156 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."

- 3.157 As set out above, the Appeal Scheme includes for significant provision of open space which can be viewed as providing an alternative recreational resource to the SPAs / SACs and Ramsar sites in the local area. It is considered that such a provision will reduce the potential for use of the New Forest by new (and existing) residents.

- 3.158 However, the position of Natural England is noted, as is the need for precaution when addressing the tests of the Habitats Regulations. It is noted that the National Park Authority have adopted a Habitat Management Scheme (2020). This approach to mitigation / avoidance is comparable to that discussed above in relation to the Solent European sites. Financial contributions are secured through legal mechanisms and the funds are used to implement targeted visitor management and monitoring initiatives, all of which are fully costed in order to derive a 'per unit' charge. That strategic approach has been agreed with Natural England and has been running for some time.

- 3.159 Fareham Borough is well removed from the New Forest and for Fareham this is a new issue, subject to discussions between Fareham Borough Council and Natural England. However, it is clear that a suitable mechanism exists for appropriate and proportionate mitigation to be delivered and this is discussed below.

- 3.160 Regard has been had to the approach adopted in relation to the appeal regarding Land East of Crofton Cemetery, Stubbington (also within the jurisdiction of Fareham Borough Council). In this case, the Appellants had used the data on visitor use of the New Forest contained within the Footprint Ecology assessment report, to derive a pro-rata financial contribution. The Appellants had adopted a precautionary approach in view of the data and had proposed a figure of £351.20 per new dwelling which was 10% of the National Park Authority Habitat Management Scheme contribution.

- 3.161 With reference to the cross-boundary approach of the Solent Disturbance and Mitigation Project (described in detail above), the National Parks Authority confirmed to the Inspector that it was content to receive transferred funds (secured through legal obligation) from Fareham Borough Council, towards its mitigation scheme. It is understood that Natural England confirmed to the planning Inspector (by email dated 24th November 2021) that it would raise no further concerns in the event the Inspector was content that the approach was suitably precautionary, and funds were appropriately secured.

- 3.162 Further to the above, on 7th December 2021, Fareham Borough Council's Executive Committee agreed with the recommendation to adopt an Interim Mitigation Solution as contained within the report "*Implications of Natural England advice on New Forest Recreational Disturbance*" which was considered at the meeting of the same date. The

mitigation strategy sets out a calculated cost per dwelling of £247.05 to be secured by legal obligation. The funds will deliver a range of measures aimed at delivering enhanced open spaces (e.g. Country Parks) in the Borough, which will deter people from traveling to the New Forest for recreation purposes. The measures also include monitoring and a contribution towards access management and wardening at the New Forest SPA / SAC itself. A copy of this Interim Mitigation Strategy is included at Annex 9. It is not known at the time of producing this sHRA whether Natural England has fully endorsed the Fareham Borough Council Interim Mitigation Strategy.

- 3.163 It is notable that the Interim Mitigation Strategy is to apply to developments that are *“unable to provide on-site mitigation”*, although no definition of what constitutes suitable on-site mitigation (e.g. scale) is provided. In the case of the Appeal Scheme, as has been discussed above, it does deliver a very significant area of open space, which could broadly be considered a SANG. However, delivering the proposed open space provision alone, would not address Natural England’s concerns regarding a need to deliver measures at the SPA / SAC itself, as referenced in Natural England’s project specific advice on the issue, nor would such an approach contribute to monitoring the effectiveness of the package of measures.
- 3.164 As set out in separately submitted the Shadow Habitat Regulation Assessment, it is considered that an appropriate and proportionate package of mitigation / avoidance measures includes a financial contribution towards the Fareham Borough Interim Mitigation Strategy (£247.05 per dwelling), with the additional security achieved through the delivery of the on-site open space to be viewed as a net benefit of the Appeal Scheme, giving further comfort as to the efficacy of the proposed measures. Following from the above, the Appellants will enter into a legal obligation (e.g. Unilateral Undertaking) with Fareham Borough Council to pay the appropriate financial contribution, which would equate to £30,881.25 based on 125 units. It can be concluded that no adverse effect on the Integrity of the New Forest SPA / SAC / Ramsar site would arise, subject to the securing of the contribution and its payment ahead of first occupation.
- 3.165 In terms of wider considerations related to this policy limb, environmental and traffic implications have been assessed and no adverse impacts have been identified. The following statutory consultees have raised no objection:

i) Hampshire County Council Highways Authority – No objection subject to planning conditions and a Section 106 Agreement.

ii) Environmental Health Officer (Air Quality/Noise/CEMP) – No objection subject to planning conditions

iii) Natural England -No objection.

iv) HCC Flood Water Management Team - No objection subject to planning conditions.

v) HCC Archaeology - No objection subject to planning condition securing written scheme of investigation.

vi) Ecology - No objection subject to planning conditions

3.166 These consultation responses can be found at **CDB.1 – CDB.20**.

Overview on compliance with Policy DSP40

3.167 As the above analysis demonstrates, alongside that of other witnesses, with the exception of a minor breach with the first part of criterion ii, I consider that the proposal meets the requirements of policy DSP40 in full. The policy support provided by DSP40 weighs in favour of granting planning consent, and consequently I consider reasons for refusal (a) – (d) are unsubstantiated.

Reasons for refusal e) – h) - Secure open space, affordable housing provision, education provision and a travel plan

3.168 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.”

3.169 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.”

3.170 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.”

3.171 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.”

3.172 The appellant is currently finalising a Section 106 Agreement with the Council. The S106 Agreement will address reasons for refusal (e – h) through the following mechanism:

- *Provision of open space Open space to be provided by 85% occupation. A Play Area contribution of £70,000, a Play Area maintenance contribution of £38,000 and an Open space maintenance contribution of £6/sq.m.;*
- *To secure the delivery of 40% of homes to be affordable housing. Preferred tenure mix is 65% affordable rent and 35% intermediate homes as defined within the NPPF;*
- *A financial contribution towards education of £327,609.24;*
- *Secure the submission and implementation of a full Travel Plan, and a surety payment of £28,750.*

3.173 The development (will) therefore makes suitable provisions to secure adequate provision for community and infrastructure contributions.

3.174 Therefore, I maintain that RfR (d – h) are adequately addressed by a Section 106 Agreement, and would be wholly compliant with the tests of section 122 of the Community Infrastructure Levy Regulations 2010 (as amended). This is agreed with the Council.

3.175 The provisions of policies CS4, CS5, CS18, CS20, CS21, DSP13 and DSP15 are therefore met.

Accordance with the Development Plan as a whole

- 3.176 In accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, in this section I have considered the development plan.
- 3.177 I conclude that the Appeal Scheme complies with the development plan when read as a whole, and that they comply with the majority of specific relevant development plan policies referred to by the Council in their stated reasons for refusal, if applied reasonably and with suitable balance. Indeed, as I note above, the Appeal Scheme enjoys significant support from individual policies.
- 3.178 I consider that the proposal is consistent with the principles of the Council's Spatial Strategy and that LPP1 and LPP2 clearly expect development to be delivered through a variety of means including the determination of planning applications, and with Policy DSP40 engaged in situations such as this.
- 3.179 The Appeal Site therefore represents an opportunity to deliver much needed housing at a settlement which the emerging Local Plan directs new development towards. The Appeal Scheme will contribute towards meeting that need. Given the housing land supply shortfall, that housing need exists now. Accordingly, the suggestion that the proposal would undermine the Council's Strategy does not identify any proper basis for an objection in principle to development in this location.
- 3.180 Importantly, I consider that the Appeal Scheme complies with the key spatial strategy set out by the development plan. This represents the first limb of Section 36(6), and therefore this appeal does not depend on the Appellants demonstrating material considerations which justify a departure from the development plan, as it is policy compliant.
- 3.181 I find no conflict with all other policies referenced in the decision notice for the reasons I have identified above. Notwithstanding the above, if it is found by the Inspector that the proposals do not accord with the development plan as a whole, then it is necessary to whether other material considerations relevant to this appeal would outweigh any potential conflict(s). This is the purpose of the next section.

4. Material Considerations and Planning Propositions

- 4.1 This section deals with other material considerations in this appeal. I consider a range of matters that are pertinent to the determination of this appeal in this section, notwithstanding my overarching opinion that the proposals accord with the development plan.

National Planning Policy Framework (2021)

- 4.2 The policies of the NPPF provide a very important context to the consideration of the 'planning balance' to be applied in the case of appeals such as this one. I therefore set out in this section my consideration of the relevant policies.
- 4.3 The NPPF has represented a radical change in national planning policy since 2012, as has been confirmed in the courts in *Solihull MBC v. Gallagher Estates Limited and Lioncourt Homes* ([2014] EWCA Civ 1610).
- 4.4 The latest version of the National Planning Policy Framework ('NPPF') was published by the Government in 2021 and is a significant material consideration in the determination of this appeal.
- 4.5 The NPPF is clear that the purpose of the planning system is to contribute to sustainable development. Sustainable development is summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs, and should achieve net gains for economic, social and environmental objectives.

Economic Role

- 4.6 The economic role requires the planning system to, inter alia, ensure that sufficient land of the right type is available in the right places and at the right time to support growth. This is achieved with the Appeal Scheme on the basis that it is located within a sustainable location, within walking and cycle distance to local services and facilities. The Scheme also provides for housing development of the type and mix required to meet identified needs.
- 4.7 The Appeal Scheme further addresses the economic role in terms of increased LPA Revenues, Construction impacts (increased GVA, jobs etc.) and increased expenditure in local area.

Social Role

- 4.8 The social role requires the planning system to provide the supply of housing required, creating a high quality built environment, accessible to local services and reflecting the community's needs. All of these requirements can be achieved with the Appeal Scheme, with a new community hall, bus stop enhancements and turning areas, and a new public right of way proposed (which will formalise the current permissive route).

Environmental Role

- 4.9 The environmental role requires the planning system to protect and enhance the natural, built and historic environment. This can be achieved with the proposal in a location that will not result in any significant adverse effects upon the character of the surrounding area, including in landscape terms and through BNG enhancements as explained by Mr. Goodban.

The most important policies of the development plan are out-of-date

- 4.10 The application of the 'presumption in favour of sustainable development' is explained in paragraph 11. For decision-taking this means:

*"c) approving development proposals that accord with an up-to-date development plan without delay [**"the straight balance"**];*

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, 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 proposed;

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 [**"the tilted balance"**]." [My annotations]*

- 4.11 The circumstances in which policies are deemed 'out of date' is confirmed in footnote 8, which include (but are not limited to), for applications involving the provision of housing, where a Council 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.
- 4.12 It is agreed between both parties, within the Planning Statement of Common Ground (5 Year Housing Land Supply) that the Council is not able to demonstrate a five year supply of deliverable housing land against the five year requirement for the five year period 1st April 2020 to 31st March 2025. As such, it is common ground that the Council is not meeting paragraph 60 of the NPPF and, by virtue of footnote 8, paragraph 11(d) is engaged.
- 4.13 The circumstances in which policies in the NPPF '*provide clear reason for refusing*' a proposed development (such that the presumption does not apply) are confirmed in footnote 7. Specifically, in respect of impacts on local habitat sites, Paragraph 182 confirms 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.*"

- 4.14 As explained by Mr. Goodban's evidence, the Appeal Scheme is not caught by paragraph 182 (11dii) because significant effects on habitats sites can be appropriately mitigated, and therefore the presumption does apply.
- 4.15 The evidence of Mr. Brown deals with the issue of whether the Council can currently demonstrate a five year supply of housing, and his conclusions are clear and robust. The Council is clearly unable to demonstrate a five year housing land supply which renders the most important policies to be out-of-date in accordance with the NPPF. In any event, for reasons I have previously given in Chapter 3, the most important policies are also out-of-date.
- 4.16 The tilted balance of paragraph 11(d) of the NPPF therefore clearly applies to the determination of this appeal.
- 4.17 In the absence of a five year housing land supply, the NPPF does not prescribe what weight should be attached to development plan policies which are deemed 'out of date'. I consider that consistent with the findings in the Hallam Land judgment (**CDK.8**) and also the Gladman v Sedgemoor judgment (**CDK.18**) that the extent of the shortfall in housing land supply is relevant to the weight to be given to those policies and to the benefit of the provision of housing in this scheme. The evidence of Mr Brown identifies a substantial shortfall in five year housing land supply, and identifies a significant under delivery of housing over the Local Plan period.
- 4.18 In summary, and for the reasons set out above I consider that the most important policies for the determination of the appeal are out of date and significantly reduced weight should be attributed to them. As a consequence of the housing land supply shortfall, paragraph 11(d) of the NPPF applies and the tilted balance is engaged, because there are no NPPF policies the application of which provide a clear reason for refusing the development. I consider the planning balance later in my Proof.
- 4.19 I consider that in this case the following are the "*policies which are most important for determining the application*":
- *CS6: The Development Strategy*
 - *CS14: Development Outside Settlements*
 - *DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries*
 - *DSP40: Housing Allocations*
- 4.20 In summary, and for the reasons set out above I consider that the most important policies for the determination of the appeal are out of date and significantly reduced weight should be attributed to them. As a consequence of the housing land supply shortfall, and an HDT of just 79%, paragraph 11(d) of the NPPF applies and the tilted balance is engaged, because there are no NPPF policies the application of which provide a clear reason for refusing the development. I consider the planning balance later in my Proof.

Housing Need in Fareham

- 4.21 The Planning for the Future White Paper published in August 2020, set out the Government's proposals for "*once in a generation*" reform of England's planning system, and separate proposals to reform the current system of calculating housing need proved controversial. It made a variety of comments regarding the supply of new homes, and noted that the planning system "*simply does not lead to enough homes being built, especially in those places where the need for new homes is the highest.*"
- 4.22 Despite some recent somewhat confusing political rhetoric, the NPPF continues to place a clear emphasis on the need to increase the supply of housing across the country. Indeed, paragraph 60 of the NPPF is explicit that in order to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, and that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- 4.23 The position of the Appellants is that there is a substantial need for both new open market and affordable housing within Fareham. This represents a significant material consideration in favour of the grant of planning permission, which I consider further below. Furthermore the need for affordable housing remains acute with very little indication that it will meaningfully improve.
- 4.24 In a situation like in Fareham Borough, where a Local Plan has been adopted but then is effectively out of date through the failure of Welborne new settlement to deliver in the timescales envisaged, and consequently where it has failed to meet its identified housing need set out within it, it is apparent to me that significant weight must be given to schemes where the benefits clearly and demonstrably outweigh the adverse effects. Indeed, and as I have noted in Chapter 3 of this Proof, that adopted Local Plan expressly expects development on green field sites in order to meet these identified housing needs through the application of policy DSP40.
- 4.25 Further, in this case the site is proposed for allocation in the emerging Local Plan, where the principle of its developable must be considered acceptable in principle, particularly with the extant permission being granted in 2020.
- 4.26 As set out in the Planning Statement of Common Ground (**CDD.1**), it is agreed between both parties that the Council is unable to demonstrate the required 5 year housing land supply against the minimum five year requirement for the five year period 1st January 2021 to 31st December 2025, thus triggering the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 4.27 The Council maintains it has a five year supply of 2,310 dwellings. By their calculations, this results in a shortfall of 924 dwellings and a supply of 3.57 years. The Council's Housing Position Statement is due on 11th January 2022, and we therefore reserve the right to prepare a rebuttal to this Position Statement.
- 4.28 Mr. Brown considers that the actual shortfall is much greater. As confirmed in case law, the extent of the shortfall is relevant to the weight that can be given to out-of-date policies, as well as to the benefits of housing delivery. Accordingly, whilst the Council

concedes that it is unable to demonstrate an up-to-date five year housing land supply, the extent of the shortfall is material to assessing the merits of housing delivery from the Appeal Scheme.

- 4.29 It is agreed by both parties in **CDD.4** that the current shortfall is significant and, in the circumstances, the weight to be given to the delivery of housing from the Appeal Scheme is also significant.
- 4.30 Recent appeal decisions in Fareham have established the Council's current position that there is a shortfall and it will not be rectified other than through speculative applications and the approval of housing on sites not originally envisaged for housing in the adopted Local Plan.
- 4.31 Inspectors have previously reasoned that the Council's published five year housing land supply position is overly optimistic, and this is expressly set out in the June 2021 decision on the '**Newgate Lane (North and South Appeal)**' (**Appendix TB6**) which I summarise below:

a) The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)

b) The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)

c) Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)

d) The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4 year land supply and the appellants a 0.97-year land supply (para 87 refers)

e) Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers).

f) The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers).

- 4.32 Just before I settled this proof, an appeal decision was issued on 109th January 2022 on the "**Land East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham,**

PO14 2TF” proposals (Reference APP/A1720/W/21/3275237) (**Appendix TB8**). I note that paragraph 6 of that decision states that:

“The parties concur that the Council is currently unable to demonstrate a five year supply of housing land. The current figure is agreed to be between 3.17 and 3.57 years of supply. The parties also agree that significant weight is to be attached to the delivery of housing from the proposed development. As such I have not considered necessary to conclude on the precise extent of the shortfall.”

- 4.33 As such, it is common ground that the Council is not meeting paragraph 60 or paragraph 75 of the NPPF and, by virtue of footnote 8, paragraph 11(d) is engaged, unless it is dis-applied by virtue of paragraph 182. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 4.34 The Appellant contends, therefore, that significant weight should apply to Paragraph 11(d) of the NPPF and weigh in favour of allowing this Appeal in making up in part, the significant shortfall that has occurred and will continue to occur within the Borough in the short term. The foundations of the NPPF are built upon supporting the presumption in favour of sustainable development, particularly in cases where it has been identified that a shortfall in housing exists.
- 4.35 At this time the agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025 (as set out in **CDD.1**). Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed that the presumption in favour of sustainable development at paragraph 11(d) of the NPPF is engaged.
- 4.36 The Council is reporting an updated five year housing land supply paper to its Planning Committee on 19th Jan 2022. The updated assessment covers the period 1st January 2022 to 31st December 2026. The Appellant will review the content of the Update and will work with the Council to prepare a separate Housing Land Supply Statement of Common Ground. This will be submitted to the Inspector prior to the commencement of the inquiry. Separate housing land supply evidence may be submitted as necessary.
- 4.37 In the context of which are the most appropriate, I consider that the Appeal Scheme represents a site that has not only been the subject of extensive assessment by the LPA but deemed to be one of the most suitable sites. The Appeal Site has been identified as a housing allocation under policy HA10 of the Publication Local Plan. It has also been granted outline planning permission for 55 dwellings in September 2020, and that forms part of the identified supply.
- 4.38 As a consequence of the housing land supply shortfall, paragraph 11(d) of the NPPF applies and the tilted balance is engaged, because there are no NPPF policies the application of which provide a clear reason for refusing the development. I consider the planning balance later in my Proof.

- 4.39 I note that based on the Hallam Land v SoS MHCLG and the Gladman v SoS / Sedgemoor judgments, the weight to be given to the housing land supply shortfall becomes very significant given the demonstrable five year housing land supply shortfall, and the extent of the shortfall. As set out in paragraph 74 of the NPPF, the implications are significant as without a demonstrable five year housing land supply, housing proposals must be considered in the context of the tilted balance set out at Paragraph 11(d) of the NPPF.
- 4.40 Consequently the overall contribution that up to 125 dwellings being proposed that can quickly commence on site would make a significant and immediate material contribution to the Council's shortfall in housing supply, and would be fully delivered within the next five years. I therefore consider this to be a very significant benefit of the proposed development, and consequently should be given significant weight accordingly.

Affordable Housing Provision

- 4.41 The Appeal Scheme will deliver affordable housing provision in accordance with the policy requirement of 40%. On this basis, and applying the capacity of up to 125 dwellings, the Appeal Scheme is capable of delivering 50 affordable dwellings. As set out in the unilateral undertaking, the affordable scheme includes up to 33 dwellings for rent (65%) and up to 17 shared ownership dwellings (35%).
- 4.42 Mr. Brown's evidence in the form of his Affordable Housing Statement is included as my **Appendix TB11**. It sets out his analysis of the affordable housing position in FBC, where he concludes that there is a significant need for affordable homes, with the benefits of the delivery of affordable housing from the Appeal Scheme attracting significant weight in the overall planning balance.
- 4.43 The need and supply of affordable housing provision was considered by the Inspector in the recent "**Newgate Lane North and South**" appeal decision (Reference: APP/A1720/W/21/3269030 dated 28th July 2021 (**Appendix TB6**) at paragraph 97, which states:
- "It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted Affordable Housing Strategy (2019) identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-20019, well below the need identified for that period by the Council's Housing Evidence: Overview Report (2017)."*
- "I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case"**. (my emphasis)
- 4.44 I support and adopt the above findings of that Inspector, which is underlined by the analysis I have undertaken and set out below, as well as that of Mr. Brown.
- 4.45 Fareham Borough Council's Affordable Housing Strategy (**CDH.31**) states that the Council's research indicates that the current level of need for affordable homes in the

Borough is in the region of 3,000 households. This is made up of the current waiting list, which as of 2019/20 stood at circa 1,000 households; a further 1,000 households seeking intermediate products such as Shared Ownership homes; and at least a further 1,000 households which are privately renting or sharing parental homes because young families are priced out of home ownership.

- 4.46 The Council's Affordable Housing Strategy states that there will be a need of 3,500 new affordable homes between 2019-2036, equating to 206 affordable dwellings per annum. This level of need is reflected in the Revised Publication Local Plan. The Affordable Housing Strategy also recognises that most of these homes will be delivered within market developments that come forward through the planning system.
- 4.47 The Council's Annual Monitoring Report (**CDH.36**) states that in 2019/20 just 27 out of the 285 housing completions that year constituted the delivery of new affordable housing. That is just 10% of overall supply, when the policy requirement is for larger schemes to provide 40%.
- 4.48 Mr. Brown's evidence, at my **Appendix TB11**, explains that drawing upon the Government's Affordable Housing Delivery Statistics, the Council has delivered 620 affordable homes in the period April 2011 to March 2020. He notes that this is equivalent to an average rate of 68.89 affordable dwellings per annum since 2011. I have reproduced his Table 1 below for convenience.

Table TB1: Affordable Housing Completions²

Year	Net Affordable Housing Built	Delivery compared to PUSH OAN Assessment (2015)		Delivery compared to Housing strategy (2019-36)	
		234dpa from 2011 to 2036	Annual Shortfall	206dpa from 2019 to 2036	Annual Shortfall
2011/12	127	234	-107		
2012/13	91	234	-143		
2013/14	58	234	-176		
2014/15	137	234	-97		
2015/16	27	234	-207		
2016/17	85	234	-149		
2017/18	41	234	-193		
2018/19	44	234	-190		
2019/20	10	234	-224	206	-196
Total	620	2,106	-1,486	206	-196

- 4.49 The adopted Local Plan seeks to deliver at least 100 affordable homes per year in order to avoid significant homelessness and housing supply problems in future years (paragraph 6.24).
- 4.50 Despite this, the above Table TB1 demonstrates that affordable housing supply has consistently fallen below this target, with the last three years showing a significant shortfall, where only 41 affordable housing dwellings delivered in the year 2017-18; 44 in 2018-2019; and 10 in 2019-20.

²² Note: these figures differ from Table 4 of the AMR, 'Affordable Housing Completions'.

- 4.51 Indeed, Strategic Objective SO6 of LPP1 sought *“To achieve a target of 100 affordable homes per year until 2016.”* It failed to meet that target every year, delivering 375 affordable homes over that first 5 year period. The table shows that delivery since then is even worse.
- 4.52 The future delivery of affordable housing in Fareham Borough is also highly uncertain. In addition to the very significant shortfall, there is also the question of whether future needs will be met. This is especially important given the over reliance on the new community at Welborne, where only 10% affordable housing provision (where 40% was expected at the time LPP1 was adopted) has been approved across the whole site.
- 4.53 The failure to meet identified needs for affordable housing over a significant period demonstrates that the Authority is not meeting its own policy requirements or the objectives of paragraph 60 of the NPPF in terms of boosting housing supply and addressing the needs of groups with specific housing requirements
- 4.54 The provision of affordable housing is an important social objective and fundamental to achieving sustainable development, as set out in paragraph 8 of the NPPF, which highlights the importance of ensuring sufficient number and range of homes can be provided to meet the needs of present and future generations to support strong, vibrant and healthy communities.
- 4.55 The provision of affordable housing shall be secured through a S106 Agreement to address RfR(f).
- 4.56 The provision of market housing should be given substantial weight in the decision making process, given the Council’s poor performance in delivering homes.
- 4.57 Similarly, the provision of affordable housing should be given substantial weight in the decision making process, given the Council’s poor performance in affordable delivering homes.

Self-Build Homes

- 4.58 The NPPF requires Local Planning Authorities (LPAs) to deliver a wide choice of high-quality homes, widen opportunities for home ownership and create, sustainable, inclusive and mixed communities. Paragraph 61 of the NPPF sets out that planning policies should reflect a mix of housing based on the needs of different groups in the community, including people that wish to build their own homes. The NPPF reminds LPAs that they have a duty to assess local demand for self-build land and must make provision for that demand.
- 4.59 This is reinforced in the Planning Practice Guidance (PPG) that states *“relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority’s register during a base period. ... At the end of each base period, relevant authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period”* (Paragraph: 023; Reference ID: 57-023-201760728).

- 4.60 Specific guidance on the provision of self-build housing is set out in the Planning Practice Guidance section entitled 'Self-build and custom housebuilding' (Reference ID: 57-20170728). This includes guidance on the 'duty to grant planning permission etc.' established in the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016).
- 4.61 The PPG makes several suggestions as to how an LPA can increase the number of planning permissions suitable for self-build housebuilding of which one is "working with custom build developers to maximise opportunities for self-build and custom housebuilding" (Paragraph: 025; Reference ID: 57-025-201760728).
- 4.62 The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) establishes under Section 1(1) that relevant authorities, such as borough and district councils, must keep a record of individuals or associations of individuals who are seeking to acquire plots of serviced land within that authority's area for their own self-build home.
- 4.63 Section 2A(2) goes onto impose a duty on relevant authorities that they must give "*suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period*". In this case 'development permission' means planning permission or permission in principle within the definitions of the Town and Country Planning Act 1990.
- 4.64 The Act is therefore clear that the Council must provide sufficient serviced land plots to meet the demand arising from the individuals, or groups of individuals, on its self-build register. The Council can ensure there are sufficient serviced land plots by ensuring that a sufficient number of planning permissions are granted. As noted above, there are no self-build plots currently available in the Borough.
- 4.65 The Act was introduced to facilitate an established and steadily growing demand for better homes to be facilitated through the provision of serviced plots. Many prospective homebuyers are dissatisfied with their current options, whether that be new build, existing re-sale stock or renovation or conversion opportunities. The self-build market therefore represents a viable alternative to those looking to live in their own home particularly with new forms of development finance becoming available at affordable rates and self-build dwellings being exempt from the Community Infrastructure Levy.
- 4.66 A Briefing Paper³ for the British Parliament notes that whilst there is no conclusive figure for the number of self-build homes built each year there is a generally accepted estimate that these account for between 7-10% of new homes, or approximately 12,000 homes per year. This is a much lower rate of self-building compare to other European countries where for example in Austria 80% of dwellings are self-build and in France the figure is nearly 60%. Consequently, there is considered to be a significant unmet need for self-build housing in the UK.

³ Wilson W., 2017, Self-build and custom build housing (England), Briefing Paper No. 06784, House of Commons Library, London

- 4.67 The Proposed Scheme, which includes an element of self-build would be one such opportunity to work with a developer to maximise the delivery of self-build dwellings.
- 4.68 At the local level there are no current planning policies regarding self-build housing in any LPP1 or LPP2. However, it is proposed that the emerging Local Plan will contain a policy on self-build.
- 4.69 Fareham Borough Council's self and custom build register was published on the Council's website on 21st March 2016. The register seeks information from individuals about the location and type of house they would wish to build and provides evidence of the demand for self and custom housebuilding in the Borough.
- 4.70 **Table TB2** below provides a breakdown of the base periods in relation to the Council's self and custom build register and the deadlines for providing suitable development permissions to meet the need for each base period.

Table TB2 - Number of entries on Fareham's register

Base Period	No of individuals during base period	No of groups during base period	Individuals meeting the local connection test	Delivery deadline
Base Period 1 21/03/16-30/10/16	35	0	35	30/10/19
Base Period 2 31/10/16-30/10/17	62	0	61	30/10/20
Base Period 3 31/10/17-30/10/18	31	0	27	30/10/21
Base Period 4 31/10/18-30/10/19	52	0	42	30/10/22

- 4.71 The Table shows the number of new entries registered on Fareham's Self and Custom Build Register for each base period. 35 applicants joined the self and custom build register within the first 'base period'. Therefore, the Council were required to grant planning permission for 35 self and custom build plots by 30th October 2019.
- 4.72 As I note, there is no existing policy that facilitates self build in the adopted development plan.
- 4.73 I note that Emerging Policy HP9 (Self and Custom Build Homes) of the Publication Local Plan sets out an approach for self and custom housebuilding. On sites of 40 dwellings or more (gross), 10% of the overall dwellings shall be provided through the provision of plots for sale to address local self or custom build need.
- 4.74 I note the recent conclusions of an Inspector on the important contribution offered by self build housing in the ***"Roundhouse Farm, Land Off Bullens Green Lane, Colney Heath"*** appeal decision dated 14 June 2021 (Reference APP/B1930/W/20/3265925/6) (my **Appendix TB12**).

- 4.75 From paragraph 50, the Inspector considers the circumstances surrounding the absence of any real supply in that Borough, and concludes at paragraph 52 that:

“52. In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a particularly poor one. To conclude, I am of the view that the provision of 10 self build service plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.”

- 4.76 The Appeal Scheme provides for 6 self-build units, which will assist the Council in meeting its obligation with regard to meeting the needs of those who wish to develop their own homes. The provision of self-build housing is a further significant benefit of the Appeal Scheme. Given the current waiting list, and noting the Colney Heath decision, I consider that the provision of these plots should be given substantial weight.

Emerging Fareham Local Plan 2037

- 4.77 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.

- 4.78 On 23 November 2021⁴, in response to a question from the Rt Hon Daisy Cooper, the member for St Albans, the Housing Minister Chris Pincher stated:

“The challenge for all authorities, however, is to get an up-to-date plan in place. We might say that, in the land of no plan, the local housing need number is king. If there is no set number in an up-to-date local plan, it is quite possible for developers to submit speculative development applications to local authorities. The local authorities may choose to turn them down, but if they have no number in their plan, the local housing need number is the default that the Planning Inspectorate will look at. It is entirely possible that the Planning Inspectorate will overturn refusals sent down by local authorities that do not have up-to-date plans or targets and will instead look at the local housing need target. It is incumbent on local authorities that wish to protect their communities and avoid speculative development to get up-to-date plans in place”.

- 4.79 This emerging Local Plan has been subject to protracted delays and this has clearly contributed to the ongoing housing land supply shortfall. However, once adopted the Local Plan will supersede the Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites & Policies) and will provide the policy basis for the determination of future planning applications. It will also establish the overall housing requirement to be met during the plan period to 2037 as well as the spatial strategy and site-specific allocations of land for housing.

⁴ <https://hansard.parliament.uk/commons/2021-11-23/debates/A1816F84-64EE-41F6-8900-70938C91E88A/HertfordshireGreenBeltNationalPlanningPolicy>

4.80 The Publication Local Plan identifies the Appeal Site as an allocated housing site (HA10 - Funtley Road South). The policy (see my **Appendix TB13**) requires development proposals to meet the following site specific requirements:

- 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.*

4.81 Since the submission of the Local Plan, the Inspector has commenced his initial review of the information. On 17th November 2021, the Inspector wrote to the Council asking a number of questions and seeking further information and clarification (see my **Appendix TB14**).

- 4.82 The Inspector has sought further clarification on the following matters:
- *Duty to Co-operate*
 - *Habitat Regulation Assessment*
 - *Housing Need*
 - *Housing Land Supply*
 - *Welborne Garden Village*
- 4.83 Due to the concerns raised by the Inspector, it is likely that there will be a further delay to the adoption of the Local Plan. We await the Council's response, but I would observe that these are not minor issues and go to the heart of the soundness of the Plan.
- 4.84 In the interim, the existing policies for the supply of housing are out of date and the Council cannot demonstrate a five year supply of deliverable housing land. The shortfall for both market and affordable housing will continue to worsen, and it is essential that in these circumstances Policy DSP40 is properly engaged.
- 4.85 In addition to the above, the Appellant will be submitting objections to the Plan, including in relation to the overall approach to housing delivery and to the number of homes proposed for the appeal site under Policy HA10. I do not consider that there is anything within the Council's submitted supporting evidence base to substantiate it continuing to propose the allocation of the Appeal Site for only 55 dwellings.
- 4.86 Further, the Local Plan includes a variety of sites with some real challenges, including locations within existing strategic gaps and other landscape designations, on existing open spaces, impacting Scheduled Ancient Monuments and SINCs, and other significant constraints. Although it is for the Local Plan Inspector to consider individual sites on merit, I simply note that there are no 'easy choices' in Fareham, and the site options that the Council have included are certainly not without some challenges.
- 4.87 Consequently, and for the reasons set out above, and in accordance with the approach set out at paragraph 48 of the NPPF, the emerging Local Plan can only be afforded very limited weight as a material consideration. At this time I have some concern that the submitted Local Plan will not be found sound. I also think it is unlikely that it will be adopted this calendar year.

Highways

- 4.88 In terms of highways, the proposed scheme comprises of the following key features:
- *The applicant has confirmed their agreement to provide a suitable layout to enable a bus to suitably access the site and turn, inclusive of bus stop facilities in an appropriate location(s). The route and turning provision within the site can be discussed in more detail as part of any reserved matters planning application;*

- *The facilities on-site can be secured via the Section 106 agreement, which would require the layout and turning facilities appropriate to serve the bus route to be provided at an agreed point in time;*
- *An amended 'Site Access Junction' drawing (Reference 1908016-01B) has been prepared which shows a 6.75 metre wide access road at its junction with Funtley Road. This is to ensure that the bus can access the site;*
- *The development will secure provision of a pedestrian and cycle public right of way through the site from Funtley Road (north) to Thames Drive (south); associated works to upgrade the bridge over the M27 motorway (including structural survey) and a commuted sum for future maintenance;*
- *Footway improvements can be secured on Funtley Road via vegetation clearance within highway land;*
- *The development proposes additional footway links on Funtley Road to improve access from the site to the wider footway network;*
- *Car and cycle parking for the development will be provided in accordance with the Fareham Residential Parking Standards SPD, with numbers and layout to be confirmed at the reserved matters stage;*
- *Servicing will be undertaken within the site, with the site able to accommodate the movements of a refuse vehicle entering and leaving the site in a forward gear;*
- *The development would generate additional vehicular trips in the morning and evening peak hours, equivalent to less than two vehicles every minute;*
- *To secure submission and implementation of a Travel Plan via a S106 Agreement;*
- *The provision of a £150 voucher per household for the purchase of a bicycle;*
- *The provision of a £50 voucher per household for bus travel. Tickets could be purchased for the revised service that will pass through the development site;*
- *To secure a financial contribution towards the production of school travel plans in the area; and*
- *To secure a financial contribution toward the revision of the existing traffic regulation order (TRO) to allow the speed limit restrictions on Funtley Road to be amended (£5,000).*

4.89 A Highway Statement of Common Ground (**CDD.4**) has been agreed between the Appellant and Hampshire County Council setting out agreed highway matters. This is also set out in the Highway Proof prepared by Mr. McMurtary.

- 4.90 Overall, this package of highway works and provision should be given significant weight.

Provision of a Shop/Community Hall

- 4.91 The proposed development proposes the inclusion of a new shop/community facility within the scheme. The location of this is shown on the submitted parameter plan (**CDA.18**) and is included with the development description.
- 4.92 As with the previously approved scheme, a Section 106 Agreement will be entered into, to secure details of the delivery of the shop/community building, the transfer of land (0.1 hectares in size) on application site. It is proposed the full clauses of the provision is a direct copy of the provision set out in the 55-dwelling scheme Section 106 Agreement.
- 4.93 I attach a letter at **Appendix TB15** from the Fareham East District Scouts who are keen to take occupation of the community building, demonstrating that there is a real and viable option for the proposed facility.
- 4.94 Overall, this facility should be given significant weight.

Landscape/Biodiversity Enhancements

- 4.95 The Appeal Scheme proposes a new landscape of woodland, wetlands and meadows will be created to connect up existing ancient woodlands, provide an attractive leisure and biodiversity resource and contain the proposed development.
- 4.96 The significant landscape features on the Appeal Site, including areas of ancient replanted woodland, treebelts and mature trees, will be retained and enhanced, conserving the characteristic wooded horizons. The smaller scale field pattern that once compartmentalised the site and is now only indicated by a few remnant trees, once linked the wooded horizons to the valley floor. Access to the existing ancient woodland is also being removed.
- 4.97 This pattern will be reinstated through the proposed north-south green links which will incorporate the remaining trees and provide access routes, SuDS, biodiversity corridors and new native tree and shrub planting, as well as species-diverse grasslands. View corridors through the development are created to break it into distinguishable neighbourhoods. These greenways consist of wetlands, ponds and swales, and new woodland focused on existing trees.
- 4.98 Mr. Goodbun notes that the matter of Biodiversity Net Gain (BNG) is not raised within the Council's SoC, nor has there ever been a suggestion by the Council or Hampshire County Council (HCC), acting as its ecological advisor for consultation purposes, that a net gain for biodiversity is not achieved.
- 4.99 Indeed, as referenced within the agreed SoCG (ecology and nature conservation), it is a matter of agreement between the parties that in respect of habitats (and also protected species and designated sites such as the SINC / Ancient Woodland) that

appropriate and proportionate mitigation and enhancement measures have been put forward and agreed.

- 4.100 The Appellants are mindful that The Environment Act 2021 has now been passed. Whilst the Act sets out a 10% biodiversity net gain requirement, it is the case that secondary legislation is required to be passed in order for it to be implemented. Therefore, the 10% biodiversity net gain requirement as set out in the Act is not yet law and is not applicable to the Appeals. As I have explained, the NPPF and Local Plan (adopted and emerging) seek a net gain in biodiversity without identifying a specific percentage. A net gain of just 1% would be policy compliant in these circumstances.
- 4.101 Mr. Goodbun has appended three versions of the completed DEFRA Metric v3 (the current version of the metric). He explains the various 'outputs' in his evidence, and I do not repeat them here. He advises that the Appeal Proposals can deliver a minimum BNG for habitats in excess of 20%.
- 4.102 I consider that the landscape/biodiversity benefits to the site should be given significant weight.

Public Open Space (Community Park)

- 4.103 The Appeal Scheme provides an opportunity to provide a significant quantum of additional public open space through provision of a new Community Park, formal village green and amenity space that will assist in addressing the identified open space deficiency in this settlement area. A new and Locally Equipped Area of Play is also proposed.
- 4.104 The Community Park will provide significant areas of open space for informal recreation, with habitats enhanced through management and planting. The character of Funtley Road frontage will be designed to reflect the surrounding area helping to connect the existing and new communities but also providing a locally distinctive setting within which to integrate development.
- 4.105 This new open space and Community Park will, through the provision of the new footpath/cycle link across the M27, also be accessible to those residents to the south of the motorway, where there is an identified severe shortfall in Parks and Amenity open space.
- 4.106 Provision of open space is significantly above that required by the Council's adopted SPD, and above that being sought by the emerging policy. This, together with the proposed new play space, is a considerable benefit weighing in favour of granting planning permission.
- 4.107 A Section 106 Agreement will be entered into, for the provision of, laying out and transfer of the Community Park land to Fareham Borough Council and a financial contribution towards the associated ongoing maintenance costs of operating the Community Park. This will address RfR(e) regarding the provision of open space and facilities and contributions toward the associated management and maintenance.

- 4.108 The Section 106 Agreement will also secure the on-site provision of public open space including local equipped area of play (LEAP) in accordance with the Council's adopted Planning Obligations SPD, a financial contribution towards associated maintenance costs and transfer of the public open space to Fareham Borough Council.
- 4.109 Overall, given the severe shortage of open space locally, this provision should be given significant weight.

Economic benefits

- 4.110 The proposed scheme represents an opportunity to support private sector investment into the local economy of Fareham Borough. The scheme will also deliver new homes and create a range of direct, indirect and induced economic impacts in the local area that are both quantifiable and non-quantifiable.
- 4.111 Some of the quantifiable economic impacts of the proposed development include:
- *Injection of private sector investment into the Borough;*
 - *Creating around 124 construction jobs;*
 - *Creating 151 supply chain jobs supported over the 3 year build period;*
 - *Helping to deliver a boost to the local economy through 'first occupation expenditure' of £688,000 on goods and services, a proportion of which will be retained locally;*
 - *Generating £1.5 million of additional resident expenditure in shops and services, of which £626,900 will be net to local businesses within Fareham Borough. This increased expenditure will also support 16 jobs in the local area;*
 - *Delivering £216,000 of net additional Council Tax receipts per annum once the scheme is built-out and occupied, and in the region of £905,000 of New Homes Bonus payments over a four year period(i.e. albeit profiled to reflect the build period for the development scheme). In addition, around £8,000 of business rates could be retained by the local authority per annum; and*
 - *Providing circa £1.3m in planning contributions towards community infrastructure/services.*
- 4.112 The economic benefits of the scheme should be given significant weight.

Solent Recreation Mitigation Strategy

- 4.113 A financial contribution towards the Solent Recreation Mitigation Partnership (SRMP) will be secured through a Section 106 Agreement, in order to mitigate the 'in combination' effects that an increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas.

Education

- 4.114 Hampshire County Council were consulted on the planning application for the Appeal Scheme as the Local Education Authority. HCC raised no objection to the development on the basis that the Appellant would provide a financial contribution of £327,609.24 secured through a Section 106 Agreement. A School Travel Plan contribution has also been agreed of £42,000.

Sustainability

- 4.115 The proposed scheme will incorporate a range of measures to reduce carbon emissions, mitigating the effects of climate change, and adaptation measures to ensure the long-term resilience of the development to the effects of climate change. As a result of climate change, summer maximum temperatures are predicted to increase; during the design of the proposed development, a number of passive design measures will be considered. A Sustainability Statement (**CDA.10**) was submitted in support of the application.
- 4.116 The Appeal Scheme will be designed and constructed in accordance with the principles of the energy hierarchy. Solar PV has been identified as the most suitable low carbon renewable energy system for the development and its use will be considered as part of the detailed design of new homes.
- 4.117 The final fabric specification and provision of energy efficiency measures and low carbon renewable energy will be defined as part of the detailed design of individual homes and may also vary as a result of changes to the Building Regulations anticipated as a result of the Future Homes Standard consultation.
- 4.118 The Appeal Scheme will also aim to provide electric vehicle charging points within the development. As a result of the energy measures, it is anticipated the development will exceed the requirements of the 2013 Building Regulations through a range of passive and active energy efficiency measures.
- 4.119 The development supports the sustainability objectives and includes a range of sustainable design measures to respond positively to Local Policy and National Policy.
- 4.120 Overall, this provision should be given moderate weight.

Recent appeal decisions in Fareham Borough

4.121 There have been a number of appeals relating to proposals for housing within Fareham Borough, going back some 7 years, that have assessed the policy position and the justification for housing beyond the settlement boundaries defined in the Core Strategy (2011) and subsequent Local Plan Part 2 (2015).

4.122 These include the four examples attached at **Appendix TB16, TB17, TB18, and TB19.**

“Land adjacent to ‘The Navigator’, off Swanwick Lane, Lower Swanwick, Hampshire” appeal decision (Reference APP/A1720/A/14/2220031) dated 20 January 2015 (Appendix TB16)

4.123 This appeal relates to a residential development for 37 dwellings on land beyond the urban settlement boundary for Swanwick. The appeal was allowed by decision dated 20 Jan 2015.

4.124 The Council claimed a 13 year supply of deliverable land. However, at Paragraph 62 of the decision sets out the Inspector’s conclusion that the supply was in the order of 3.4 years.

4.125 Paragraph 64 adds that the resulting in-principle conflict between the location of the site with Core Strategy Policy CS14 carries relatively little weight.

4.126 Paragraph 65 adds that the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

4.127 The conclusions of the Swanwick Inspector remain relevant in determining the current Appeal Scheme.

“Land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire” (Reference APP/A1720/W/16/3156344) dated 14 August 2017 (Appendix TB17)

4.128 An appeal for 120 dwellings on land beyond the settlement boundary for Portchester was allowed on the basis that the Council was not able to demonstrate a five year supply of deliverable land for housing.

4.129 The Council, despite benefiting from the conclusions in the aforementioned Navigator appeal decision, based its five year housing land supply calculation on the requirements of the Core Strategy (Policy CS2). The Council claimed a circa 5.2 year supply of deliverable housing land.

4.130 The Inspector at Paragraph 27 of the appeal decision concludes that the housing land supply position would be marginally in excess of 2 years.

4.131 For the purpose of that appeal it was agreed that the Sedgfield methodology should be applied with the shortfall accrued from the base date to be met in the relevant five year period for that appeal.

- 4.132 The Inspector found that the appeal scheme would have a highly localised substantial and adverse impact on landscape character and visual impact which would conflict with Core Strategy Policies CS14 and CS17.
- 4.133 The proposal also resulted in the loss of Best and Most Versatile agricultural land in conflict with Core Strategy Policy CS16. However, pursuant to the operation of paragraph 15 of the 2012 NPPF and on account of the lack of a five year supply of deliverable housing land the contribution the Appeal Site could make to meeting the Borough's housing needs was found to attract very substantial weight in the planning balance (paragraphs 59 to 67 refer).

“Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT” appeal decision (Reference APP/A1720/W/17/3192431) dated 10th September 2018 (Appendix TB18)

- 4.134 An appeal for 72 residential dwellings forming part of the Welborne allocation was dismissed on design grounds. Paragraphs 6, 7, 8 and 58 refs to the ‘People over Wind’ judgment and confirm that due to the operation of paragraph 177 of the NPPF the presumption at paragraph 11 does not apply.
- 4.135 Paragraph 47 refers to the agreed position with the Council that there is only provision for between 3.5 and 4 years supply of housing land. It is also added that the Council has a significant need for affordable housing.
- 4.136 Paragraph 5 concludes that the Council cannot demonstrate a five year supply of housing land.

“Land to the east of Downend Road Portchester” appeal decision (Reference APP/A1720/W/19/3230015) dated 5 November 2019 (Appendix TB19)

- 4.137 At paragraph 90 of the appeal decision, the Inspector concludes that that there were a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. The Inspector could not consider these within the scope of the Framework's deliverability definition.
- 4.138 The Inspector concluded that the Council's claim of 4.66 years HLS position was too optimistic and that the appellant's figure of 2.4 years better represented the current situation.
- 4.139 As is clear from the above, the Council has consistently failed to deliver on its housing requirement, and that legacy goes back at least some 7 years, when the Navigator appeal was allowed. With an emerging Local Plan in some difficulty, and issues relating to nitrates continuing to stifle development, the Appeal Scheme is one of a few ‘oven ready’ sites that can deliver a high quality scheme in quick order.

Strategic Housing and Employment Land Availability Assessment (SHELAA)

- 4.140 The Appeal Site has been actively promoted through FBC's SHELAA (my **Appendix TB20**) and the Local Plan process. It is referenced in the updated SHELAA (April 2021)

as 'Funtley Road South, Funtley (site ref: 3121)'. The SHELAA is published evidence to support FBC's emerging Local Plan. The Revised Publication Local Plan was published in June 2021 for consultation.

4.141 Page 71 on of the SHELAA sets out the site assessment details. This notes that:

- *It is considered that suitable accesses can be achieved.*
- *The standard of routes to the west, to safely accommodate the likely impact of development traffic would need assessing further. Opportunity to provide pedestrian and cyclist routes north of the site to Hill Park.*
- *Site not within identified area of archaeological potential.*
- *Within 400m of a High Frequency Bus Stops, within 800m of an Accessible Green or Play Space, within 800m of a Community/Leisure Facility.*
- *SINC to be retained and protected through an at least 15m landscape buffers (planting of thorny species to deter public access).*

4.142 The site was considered suitable, achievable and available for residential development.

5. The Planning Balance

- 5.1 In this Section, I will set out my view as to whether the planning balance weighs in favour or against the grant of consent. In coming to this view, I rely on the evidence provided by my colleagues and I adopt their conclusions.

Conformity with the development plan

- 5.2 The starting point for determining this appeal is the development plan, as required by section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. I consider that the Appeal Scheme is in accordance with the development plan as a whole and enjoy the benefit of support from almost all of the policies referenced in the Council's remaining reasons for refusal when applied reasonably and with suitable balance to reflect the circumstances of this appeal and other material considerations.
- 5.3 The preceding sections of this statement have illustrated that when tested against the development plan in this instance, the Appeal Scheme has been shown to accord with the Council's development plan as a whole. On this basis, permission for the proposal should be granted.
- 5.4 Further, it is common ground that the Council cannot demonstrate a five-year housing land supply, and that therefore the most important policies in relation to the supply of housing are out of date and the tilted balance is engaged. According to the tilted balance in paragraph 11(d) of the NPPF, permission should be granted unless the impacts significantly and demonstrably outweigh the benefits.

Tilted Balance applied

- 5.5 I have concluded that the most important policies for the determining the application are out of date and therefore reduced weight should be attributed to them as there is no demonstrable five year housing land supply in the Borough (and has not been for at least 7 years), and consequently the tilted balance of the Framework is triggered.
- 5.6 As Mr. Brown has demonstrated, there has been a substantial shortfall of housing supply in the plan period to date, and there is likely to be a continued substantial shortfall in the next five years following the failure to deliver homes at Welborne. The tilted balance should therefore be applied in this case, notwithstanding its compliance with the development plan.
- 5.7 Should it be found that the Appeal Scheme does not accord with the development plan as a whole, then as required by Section 38(6) it is necessary to consider if there are any material considerations which indicate that permission should still be granted.
- 5.8 In terms of NPPF paragraph 11(d), from my assessment I conclude that there are no adverse impacts which significantly and demonstrably outweigh the benefits.
- 5.9 The Appeal Scheme therefore represents sustainable development and will bring forward much needed new mixed housing within the Borough.

- 5.10 As set out in the previous section, the Appeal Scheme satisfies the economic role of sustainability including through the provision of housing to support growth and the associated provision of infrastructure, to be secured through preparation of the S106 agreement and by on-site provision of affordable housing.
- 5.11 The Scheme generates a series of local and Borough-wide economic benefits including through (i) construction of the scheme and the range of employment generated as a result; and (ii) the on-going expenditure from the households purchasing and occupying the new homes, as well as the onsite provision of the shop / community building.
- 5.12 The economic benefits are to be accorded significant weight in the planning balance.
- 5.13 The Appeal Scheme satisfies the social role, in helping to support strong, vibrant and healthy communities, including through providing the supply of housing required to meet identified needs in open market and affordable sectors. This is a significant benefit.
- 5.14 Future residents will be in an easy walking and cycling distance to a wide range of other uses including the shops, school and other services in Funtley. The development will secure provision of a pedestrian and cycle public right of way through the site from Funtley Road (north) to Thames Drive (south); associated works to upgrade the bridge over the M27 motorway (including structural survey) and a commuted sum for future maintenance. The appellant has agreed to footway improvements on Funtley Road via vegetation clearance within highway land and additional footway links on Funtley Road to improve access from the site to the wider footway network.
- 5.15 The Appeal Scheme would deliver a policy compliant 40% affordable housing contribution. The details of the layout and house type design are to be agreed through the determination of a subsequent reserved matters application, with the detailed scheme to reflect the particular need for housing at that time.
- 5.16 Overall, the social benefits of the scheme can be afforded significant weight in the overall planning balance.
- 5.17 The Appeal Scheme satisfies the environmental role, through protecting and enhancing the biodiversity characteristics of the site, with the provision of a new Community Park. It is important to recognise the significant open space provision which will be delivered by this Appeal Scheme. The Community Park comprises of an area of 9.89ha.
- 5.18 The Community Park will offer dog walking and other recreational opportunities on the doorstep of new residents. Also, significantly, these resources will offer recreation opportunities for existing residents of Funtley and the local area, attracting visitors who may otherwise use the designated sites for recreation purposes (e.g. walking, dog walking, cycling or running). Whilst it would be expected that new residents would also use other sites for recreation, it can be concluded that a significant proportion of walks (and dog walks in particular) would very likely be undertaken within the Community Park and other open space associated with the Appeal Site.

- 5.19 The Community Park will include large areas of freely accessible grassland where dogs can be run off the lead. It will also have woodland, areas of scrub, trees and hedgerows. It will offer a natural and aesthetically pleasing place to walk and undertake other activities, all located in easy walking distance from the new homes and with connectivity to nearby housing settlements. It will also facilitate significant BNG enhancements, and protect the ancient woodland.
- 5.20 The Appeal Scheme would deliver sustainable homes allowing the fulfilment of this important objective whilst at the same time moving to a low carbon economy and securing an environmentally sustainable form of new residential development. Electric charging points would be provided within the Appeal Scheme.
- 5.21 On the basis of the above, there are environmental benefits which would arise from the proposals, to which, on balance, significant positive weight should be attached to in the overall planning balance.
- 5.22 It has been explained above that the benefits of the Appeal Scheme are significant, and that there are no impacts which significantly and demonstrably outweigh these substantial benefits. Thus, the tilted balance which is positioned firmly in favour of granting permission for the proposed development.
- 5.23 On the basis of and as a consequence of the above, it is concluded that:

Reason for refusal (a) is addressed in Mr. Rummey's Proof of Evidence. Mr. Rummey has provided evidence that confirms that the Appeal Scheme would not harm the character and appearance of the countryside and has been sensitively designed to reflect the character of the neighbouring settlement of Funtley.

Reason for refusal (b) is addressed as the site is sustainability located. Hampshire County Council have raised no objection to the scheme, and the site has an extant consent for 55 dwellings granted in 2020. The site was also assessed through the Publication Local Plan 2037, where the site is identified as a housing allocation site (HA10). The Council at all stages of the planning process have identified the site as sustainability located.

Reasons for refusal (c and d) have been resolved through the preparation of a S106 Agreement to secure suitable mitigation measures. The Council have also confirmed that these matters have been resolved in their Statement of Case at paragraph 9.46.

Reasons for refusal (e to h) are resolved and agreed as part of planning conditions or Section 106 Legal Agreement.

Summary

- 5.24 My evidence puts forward the 'planning balance' case. Given the out of date nature of the most important policies of the development plan, and the fact that the Council is not currently able to demonstrate a five year housing land supply, along with consideration of the extent of the market and affordable housing shortfall, the weight I afford to the most important development plan policies in the determination of this appeal is reduced.

- 5.25 In light of the above, in the case that the Inspector does not share my view that the Appeal Scheme is in accordance with the development plan as a whole, then in order to decide whether this appeal should be allowed the Inspector must be satisfied that there are no adverse effects that would significantly and demonstrably outweigh the benefits.
- 5.26 To sum up, I consider that there is much that weighs in favour of the Appeal Scheme, namely that:
- (a) There is an urgent and substantial need for both market and affordable housing in Fareham Borough;*
 - (b) There is an urgent and substantial need for self build housing in Fareham Borough;*
 - (c) The Appeal Site is located within one of the least constrained parts of a Borough which is significant given the extent of coverage of restrictive designations elsewhere;*
 - (d) The Appeal Site is a sustainable location for development;*
 - (e) The Appeal Site is a suitable location for the scale of housing proposed;*
 - (f) The Appeal Scheme is acceptable in terms of landscape and visual impact;*
 - (g) The Appeal Scheme represents sustainable development;*
 - (h) The Appeal Scheme provides for an appropriate housing mix;*
 - (i) There are no site specific constraints to development;*
 - (j) The Appeal Scheme will deliver a range of benefits; and*
 - (k) The overall balance of material considerations and the relative merits of the Appeal Scheme weigh heavily in favour of granting planning permission.*

6. Conclusion

- 6.1 This Proof of Evidence has been produced to assist the Inspector in his consideration of the planning issues arising in these conjoined appeals.
- 6.2 It is common ground that the Council do not object to the Appeal 2, relating to a full application (ref: P/20/1166/CU) for a Community Park on Land South of Funtley Road, Fareham.
- 6.3 As such, my evidence has considered Appeal 1 (the 'Appeal Scheme'), relating to an outline planning application (ref: P/20/1168/OA) for 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.
- 6.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement for planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise. I conclude that the Appeal Scheme accords with the development plan, when read as a whole, and therefore planning permission should be granted. If it is found that the Appeal Scheme does not accord with the development plan, then I submit that in accordance with the NPPF, the most important policies are out of date and the tilted balance applies.
- 6.5 The Fareham Local Plan Part 1: Core Strategy makes provision for housing up to 2026, however, the Core Strategy was adopted in 2011, so is over five years old. Paragraph 73 of the Framework sets out that where the housing requirement set out in adopted strategic policies is more than five years old, that local housing need should be calculated using the standard method set out in national guidance.
- 6.6 As the Core Strategy is more than five years old and Policy CS2 Housing Provision sets out a housing need which is not based on the standard method, the policy is considered out of date, in accordance with paragraph 73 and footnote 37 of the Framework. When the standard method is applied, it equates to a housing need of 514 dwellings per annum for Fareham Borough Council, which is significantly higher than the Core Strategy provides for.
- 6.7 Both parties agree that there is no 5 year housing land supply and by virtue of the operation of and compliance with DSP40 in this circumstance, the Appeal Scheme is in accordance with the development plan when considered as a whole. As such, planning permission should be granted pursuant to s.38(6).
- 6.8 The established and agreed lack of a 5 year housing land supply triggers the presumption in favour of sustainable development at paragraph 11(d) and footnote 8 of the NPPF.
- 6.9 Whilst the Council seek to address unmet housing needs through their Publication Local Plan 2037, including the allocation of the Appeal Site within its most recent Publication Draft for an indicative yield of 55 dwellings, it has been established through

appeal decisions that the adopted Local Plan spatial strategy and policies that restrict the spatial distribution and location of housing is out of step with the Borough's housing needs so that the most important policies, notably LP1 CS2, CS6, CS14 and LP2 Policy DSP6 carry limited weight.

- 6.10 In so far as there was considered any breach of any part DSP40, as one of the most important policies, this policy and all parts of it would afford reduced weight with reference to paragraph 11(d).
- 6.11 The Appeal Site is sustainably located for housing development in terms of access to local services and facilities within walking distance, as confirmed by the draft allocation of the site for such in the emerging Local Plan. Additional highway improvements are proposed to ensure that the site is sustainably located. The Appeal Scheme will provide a high quality development with significant community benefits.
- 6.12 Appeal Site 2 is for the change of use of land to a Community Park and will provide significant open space provision of 9.89ha size. Although the Community Park scheme was submitted as a separate application it is not a 'standalone proposal'; its delivery will be dependent on the permission being granted for the residential scheme, subject of this appeal. There is no objection from the Council to that application, and the Inspector is invited to allow that appeal.
- 6.13 On the basis of the foregoing, the scheme is in accordance with policy DSP40 and therefore in accordance with the development plan as a whole.
- 6.14 If the Inspector considers that there is any breach of DSP40, this should be afforded reduced weight in light of the lack of a 5 year housing land supply position, which is agreed to be significant and has persisted for a number of years in spite of this policy.
- 6.15 If the Inspector considers that there is some degree of harm, and paragraph 11(d) (ii) applies, it is my opinion that the collective adverse impacts would not outweigh the significant and demonstrable benefits of the Appeal Scheme.
- 6.16 The Appeal Scheme will deliver up to 125 dwellings, including a mix of dwelling sizes and tenures, including 40% affordable housing (50 dwellings), which will make a valuable contribution towards meeting the shortfall in housing delivery and affordable housing.
- 6.17 In the planning balance it is considered that the material considerations in favour of the scheme far outweigh any alleged harm and the Appeal Scheme meets economic, social and environmental objectives of the NPPF and therefore, for the reasons set out above, the Appellant respectfully requests that the appeal should be allowed.