



**ECOLOGY**SOLUTIONS

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RESIDE DEVELOPMENTS LTD

LAND SOUTH OF  
FUNTLEY ROAD  
FUNTLEY

**Proof of Evidence in  
respect of Ecology and  
Nature Conservation**

by  
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BSc (Hons), MCIEEM

PI Refs: APP/A1720/W/21/3283643  
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## **FIGURES**

[Bound Separately]

FIGURE 1      Relevant Designated Site Locations

## **APPENDICES**

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APPENDIX 1    sHRA produced by Ecology Solutions (December 2021)

APPENDIX 2    sHRA Summary (December 2021)

APPENDIX 3    Copy of Natural England email dated 17th November 2020

APPENDIX 4    Copy of Natural England email dated 26th March 2021

APPENDIX 5    Copy of Natural England Letter dated 2nd September 2021

APPENDIX 6    Copy of Natural England email dated 12th November 2021

APPENDIX 7    Extract from letter from FBC to PINS pursuant to the Examination of the Local Plan 2037, dated 3rd December 2021

APPENDIX 8    Email correspondence relating to engagement with Natural England  
                         on the sHRA

APPENDIX 9    Copies of BNG calculations

## **1. QUALIFICATIONS**

- 1.1. My name is Karl Goodbun. I hold a BSc (Hons) degree in Countryside Management from Aberystwyth University and I am a member of the Chartered Institute of Ecology and Environmental Management (CIEEM).
- 1.2. I have been employed by Ecology Solutions Ltd since February 2006 and in January 2016 I was appointed to its board of Directors. Prior to my employment with Ecology Solutions, I worked as a field ecologist with MKA Ecology Ltd after holding project management positions with the Essex Wildlife Trust and Sandwich Bay Bird Observatory.
- 1.3. Ecology Solutions undertakes all types of environmental planning work in relation to ecology, with recent clients including National Grid, BAE Systems, Aggregate Industries, This is Gravity, Rigby Real Estate, CEMEX, the Hanson Group, Belfast City Airport, SITA, EDF Energy, E.on, Fulham Football Club, Prudential, Aviva, Prologis, Helios, Pfizer plc, British Aerospace, Legal and General, Stanhope, Northern Ireland Electricity and a range of national house-builders including Countryside Properties, Persimmon, Taylor Wimpey, Linden, Redrow, Bellway, Robert Hitchens, Fairview and Crest Nicholson.
- 1.4. I have extensive experience of evaluating development proposals in relation to a range of ecological receptors, including sites designated at the international, European, national and district / local level for their ecological importance. I have evaluated development proposals and produced mitigation / avoidance strategies in relation to many Ramsar Sites, Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Sites of Special Scientific Interest (SSSIs) and locally designated sites, such as Local Wildlife Sites (LWSs). I have also prepared a significant number of mitigation strategies for a range of protected species including Great Crested Newts, Badgers, Dormice, Bats and Water Voles. In addition, I have held numerous mitigation (development) licences for Great Crested Newts and Badgers.
- 1.5. I have been closely involved in a number of high-profile projects relating to the ecology and conservation of various species and habitats, including those relating to large residential, retail and leisure schemes, mineral workings and aerodromes. I have personally provided written and oral evidence for section 78 appeals and local plan inquiries in addition to providing written evidence for the High Court in respect of judicial review proceedings. Further, I have assisted in the preparation of evidence for numerous section 78 appeals, call-in inquiries, Lands Tribunal hearings and judicial review proceedings in the High Court.
- 1.6. The evidence which I have prepared and provided for this Appeal, contained in this proof of evidence, is true and has been prepared with due regard had to the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions. I also confirm that I have visited the Appeal Site of relevance to this Inquiry, on numerous occasions during the course of Ecology Solutions involvement with the planning application and appeal process.

## 2. BACKGROUND

- 2.1. Ecology Solutions was originally instructed by Reside Developments Ltd. to undertake a Phase 1 walkover survey of Land South of Funtley Road, Funtley (the "Appeal Site") in May 2016 in order to determine potential ecological constraints associated with the site. Subsequent to this, a series of detailed surveys were undertaken in order to inform a planning application. Planning permission was subsequently granted for that scheme (55 dwellings) by Fareham Borough Council (FBC / "the Council"). Ecology Solutions was then commissioned to undertake additional survey and assessment work in 2020 pursuant to a new planning application.
- 2.2. Under the 2020 planning application (P/20/1168/OA), Outline permission was sought 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 & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings. A parallel planning application (P/20/1166/CU) was also made in respect of a change of use of land, from equestrian / paddock to community park following demolition of existing buildings.
- 2.3. Appeals were lodged by the Appellants in respect of FBC's failure to determine the planning applications.
- 2.4. With reference to FBC's Statement of Case (SoC), cited Reasons for Refusal (RfR) "C" and D" relate to nature conservation matters and are of direct relevance to my proof of evidence.
- 2.5. RfR C states:

*"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."*
- 2.6. RfR D states:

*"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 17 other developments, would arise due to the impacts of recreational disturbance."*
- 2.7. In addition, within its SoC, FBC cite issues relating to an additional European Protected site, the New Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. The points raised concern increased recreational pressure at these designated sites and in particular, Natural England's advice that new residential development within the borough of Fareham, which falls within an identified "Zone of Influence" will need to provide appropriate mitigation. Whilst not a RfR, the matter is considered material to this Appeal and I address the issue in detail within my proof of evidence.
- 2.8. It is important to note that at paragraph 5.9 of the Council's SoC, it is confirmed that in relation to the change of use (creation of the country park) application:

*“The Committee **RESOLVED** that, had members been able to determine the planning application, they would have **GRANTED PLANNING PERMISSION**, subject to the conditions in the report. On this basis the LPA do not intend offering any evidence on Appeal 2 (save as necessary in connection with Appeal 1) and this Statement of Case concentrates on Appeal 1, the outline housing scheme.”*

- 2.9. Matters regarding Appeal APP/A1720/W/21/3284532 / planning application P/20/1166/CU, are therefore uncontested between the parties.
- 2.10. Figure 1 of my proof of evidence shows the Appeal Site location in the context of relevant designated sites. In the following section of my proof of evidence, I describe the scope of my evidence.

### 3. SCOPE OF MY EVIDENCE

- 3.1. Insofar as ecology and nature conservation matters are concerned, the RfRs relate solely to the implications of the Appeal Proposals on European / Ramsar sites (now commonly referred to as “Habitats Sites”). My proof of evidence is therefore focussed upon these specific matters.
- 3.2. I consider that it can be clearly demonstrated, beyond reasonable scientific doubt, that the Appeal Proposals will not give rise to an adverse effect on the Integrity of any Habitats Site. It is also clear from the Council’s SoC that it considers that all ‘outstanding’ matters relating to ecology and nature conservation are capable of being resolved.
- 3.3. My evidence describes, with reference to documents included as Appendices to my proof, the precise nature of purported effects on the relevant Habitats Sites. I also describe why the proposed mitigation / avoidance package of measures are appropriate and proportionate, and that they are based upon sound and accepted principles. I discuss why it can be concluded that the Appeal Proposals accord fully with the relevant legislative and planning policy framework.
- 3.4. In presenting my evidence, I draw reference to the position of Natural England, the statutory authority in relation to ecology and nature conservation matters, with all relevant correspondence included within the appendices to my proof of evidence.
- 3.5. In order to assist the Inspector, I have prepared a Shadow Habitats Regulations Assessment (sHRA), dated December 2021 **[CDAA.1]**. A copy is also included at Appendix 1 of my proof of evidence. A copy of the sHRA was shared with Natural England on the 16<sup>th</sup> December 2021 and Natural England’s view was sought on the conclusions reached within the sHRA.. The process of engagement with Natural England is discussed where relevant within my proof.
- 3.6. In my evidence I demonstrate that:
  - The Appeal Proposals accord fully with relevant legislation, jurisprudence and guidance and all levels of relevant planning policy relating to Habitats Sites;
  - The Appeal Proposals will not result in an adverse effect on any Habitats Site, subject to the securing of the mitigation / avoidance measures proposed;
  - There are no grounds regarding ecology and nature conservation on which the Appeal should be dismissed.
- 3.7. I refer extensively to the sHRA throughout my proof of evidence in order to avoid repetition and keep my evidence as succinct as possible. Wherever relevant, to do so, in presenting my evidence I also refer to the evidence submitted by other expert witnesses on behalf of the Appellant.
- 3.8. My conclusions are drawn together at Section 7.

#### 4. OVERVIEW OF THE POSITION OF FAREHAM BOROUGH COUNCIL AND NATURAL ENGLAND

- 4.1. With reference to the Council's SoC, in this section of my proof of evidence, I summarise the salient points in relation to matters concerning Habitats Sites. I also summarise the position of Natural England, with reference to relevant correspondence.

##### The position of FBC

- 4.2. The position of FBC in relation to the effects of Appeal Proposals on Habitats Sites is described in its SoC.
- 4.3. Regarding the Council's SoC, I draw the Inspectors attention to the following paragraphs in particular:

- 1) Paragraph **5.3** which sets out each of the RfR and confirms that:

- I. RfR "C" concerns a purported likely adverse effect on the Integrity of European Protected Sites (Habitats Sites) due to a "lack of appropriate and appropriately secured mitigation";
- II. RfR "D" concerns the lack of a legal agreement to secure the required mitigation in relation to recreational disturbance at "European Protected Sites" (Habitats Sites).

- 2) Paragraph **5.4** which confirms:

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

- 3) Paragraphs **5.5, 5.6 and 5.7** which together confirm that the appropriate level of mitigation has been secured in relation to nutrient nitrogen, and that RfR "C" has been addressed. This now falls away.
- 4) Paragraphs **8.2 to 8.6** which concern the 'presumption in favour of sustainable development' and the 'tilted balance';
- 5) Paragraph **8.11** which states that the Appeal Proposals ("appeal 1") are *"likely to have significant effects on habitats sites as set out in deemed reasons for refusal c and d" and the more recent matters raised by Natural England in respect of the New Forest SAC*". This being the first time that matters concerning the New Forest are referenced and despite earlier references to matters "C" and "D" being resolved subject to a legal agreement being entered into;
- 6) Paragraph **9.43** which again, helpfully confirms that "the LPA now consider that refusal reason (c) has been addressed";



7) Paragraph **9.45**, which states, in relation to RfR “C” and “D” that:

*“The Council acknowledges that these two reasons for refusal may be addressed through suitable planning obligations.”*

8) Paragraphs **9.56 to 9.61** which describe very clearly the background to issues concerning the effects of recreational pressure at the New Forest Habitats Sites;

9) Paragraphs **9.62 to 9.64** which discuss a mitigation solution for recreational pressure at the New Forest, as put forward in respect of another appeal site in the borough of Fareham and which Natural England are content with (subject to the measures being secured);

10) Paragraph **9.65** which very clearly and helpfully describes that the Council has recently (7<sup>th</sup> December) adopted an Interim Mitigation Solution to address recreational pressure at the New Forest Habitats Sites from new residential developments;

11) Paragraph **10.10** which confirms that the Council’s view is that in respect of “European Protected Sites” (Habitats Sites):

*“These effects should be capable of being mitigated through a section 106 agreement or unilateral undertaking.”*

4.4. In view of the above, in simple terms the Council’s position in relation to matters concerning ecology and nature conservation, is that of the three issues identified in the SoC, one has already fallen away, one would have already fallen away had a s106 (agreement or Unilateral Undertaking) been discussed and agreed with the Appellant, and the third (new issue) is capable of being dealt with through the s106. The position is consolidated within the “Habitats Sites Statement of Common Ground” (SoCG) **[CDD.3]**.

4.5. I would highlight at this point, that in addition to the principal issues, which concern the securing of mitigation, in its SoC the Council also make reference to the presumption in favour of sustainable development and the tilted balance. Given the nature of the planning tests involved, there is an obvious crossover with considerations relating to Habitats Sites and the application of the legal tests associated with the Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”). My evidence is focussed on the application of the tests of the Habitats Regulations, the nature of any identified effects on relevant designated sites and the efficacy of the proposed mitigation / avoidance measures. That information is critical in determining whether the tilted balance is re-engaged after undertaking an Appropriate Assessment.

4.6. Mr Burden deals with the detail of the application of the titled balance within his proof of evidence, on behalf of the Appellants.

#### The position of Natural England

4.7. Insofar as matters concern the issues of relevance to this Inquiry, Natural England was consulted at the planning application stage as part of the statutory consultation process. It was also consulted directly by Ecology Solutions in

relation to certain specific matters concerning the New Forest Habitats Sites and on the sHRA. To date no formal response has been received from Natural England regarding the sHRA.

- 4.8. Copies of relevant correspondence is included at Appendices 3 to 7 of my proof of evidence. Natural England's position regarding effects on Habitats Sites is discussed where relevant within the following section of my proof of evidence.

## **5. IMPLICATIONS FOR THE RELEVANT DESIGNATED SITES IN VIEW OF THE APPEAL PROPOSALS**

- 5.1. The Inspectors attention is drawn to the sHRA **[CDA.A.1]** included at Appendix 1 of my proof of evidence for the full assessment of the implications of the Appeal Proposals on those relevant Habitats Sites. A summary of that assessment is presented at Appendix 2 of my proof of evidence. In this section of my proof of evidence, I summarise the key findings and describe the approach to mitigation.
- 5.2. The sHRA report was prepared by Ecology Solutions in order to 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. I consider that the sHRA provides sufficient information for the Competent Authority to assess the implications of the Appeal Proposals on designated sites of nature conservation importance protected under the Habitats Regulations, and the Ramsar sites which are given the same protection in accordance with advice in the NPPF (2021).
- 5.3. The Appeal Proposals are for the provision of up to 125 one, two, three and four-bedroom dwellings including 6 Self/Custom build plots, Community Building or Local Shop (Use Class E & F.2) with associated infrastructure, new community park, landscaping and access.

### **Screening test (Likely Significant Effects)**

- 5.4. The Inspector is directed to paragraphs 4.9 to 4.27 of the sHRA at Appendix 1 of my proof of evidence for the detail in relation to my consideration of likely significant effects. A summary of relevant information is presented below.
- 5.5. The approach to assessment is demonstrably precautionary and is in line with relevant jurisprudence and guidance pertaining to assessment under the Habitats Regulations 2017 (as amended).
- 5.6. Those European / Ramsar sites which are considered relevant to the application of the tests of the Habitats Regulations, are as follows:
  - Portsmouth Harbour Special Protection Area (SPA), (approximately 2.8km km south of Appeal Site);
  - Portsmouth Harbour Ramsar site (approximately 2.8km km south of Appeal Site);
  - Solent and Southampton Water SPA (approximately 3.6km south of the Appeal Site);
  - Solent and Southampton Water Ramsar site (approximately 3.6km south of the Appeal Site);
  - Solent Maritime SAC (approximately 3.6km south of the Appeal Site);
  - New Forest SPA (approximately 13.1km west of the Appeal Site);
  - New Forest SAC (approximately 13.1km west of the Appeal Site);
  - and
  - New Forest Ramsar site (approximately 13.1 km west of the Appeal Site).

- 5.7. Having regard to the formal Conservation Objectives and qualifying interest features for each designated site (see Section 3 of the sHRA at Appendix 1 of my proof), and also the nature of the Appeal Proposals and the distances involved, specific consideration has been given to the following pathways for likely significant effects to arise on the designated sites:
- Effects from traffic related air quality;
  - Effects relating to nutrient nitrogen; and
  - Effects from increased recreational pressure.
- 5.8. Other possible pathways for likely significant effects were determined not to exist.
- 5.9. Potential significant effects from traffic related air quality have been screened out for all of the relevant designated sites, with no specific mitigation required.
- 5.10. Potential significant effects from increased recreational pressure have been screened in for all of the relevant designated sites, with Appropriate Assessment therefore required.
- 5.11. Potential significant effects relating to nutrient nitrogen have been screened in for the Solent European sites (only), with Appropriate Assessment therefore required.

#### **Integrity test (Appropriate Assessment)**

- 5.12. The Inspector is directed to paragraphs 4.28 to 4.60 of the sHRA at **CDA.A.1** / Appendix 1 of my proof of evidence for the detail in relation to the integrity test. A summary of relevant information is presented below.
- 5.13. In order to be certain, beyond reasonable scientific doubt, that no adverse on the Integrity of a Habitats Site arises, it has been concluded that mitigation / avoidance measures are required in respect of:
- Effects relating to Nutrient Nitrogen on Solent Habitats Sites;
  - Effects relating to recreational pressure on Solent Habitats Sites; and
  - Effects relating to recreational pressure on New Forest Habitats Sites.
- 5.14. A summary of the proposed mitigation / avoidance measures is provided below together with any justifications as to the efficacy of such measures. The detail can be found within Section 4 of the sHRA (see Appendix 1 of my proof of evidence).

#### *Nutrient Nitrogen mitigation*

- 5.15. Insofar as matters concern nutrient nitrogen, the nitrogen budget for the Appeal Proposals was calculated using Natural England methodology (v5, June 2020) **[CDA.A.2]**. This confirms that the Appeal Proposals would need to mitigate against a surplus of 68.8 kg/N/year. 3.72ha of mitigation land within the proposed community park will be used to assist in mitigating nitrates generated by the Appeal Proposals. For clarification, the 3.72ha of mitigation land within the proposed community park is to be secured in the s.106 Unilateral

Undertaking. The park is due to be transferred to the Council and so the park, and therefore the mitigation land, will be controlled / owned by FBC. The balance of the nitrates (39.04 kg/N/yr) is to be mitigated through the purchasing of credits from the Warnford Park Estate nitrate mitigation scheme. A contract is already in place and FBC are content that matters relating to nutrient nitrogen are resolved. For the detailed calculations regarding the nitrate budget and all supporting information relevant to the securing of the appropriate level of mitigation, the Inspector is directed to **CDA.2 to CDA.9** and Annexes 10 and 11 of the sHRA (Appendix 1 of my proof).

*Recreational pressure mitigation - Solent*

- 5.16. Regarding increased recreational pressure at 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 [**CDH.8**] (secured by s106 Unilateral Undertaking or Legal Agreement).
- 5.17. The Appellants are committed to providing the relevant financial contribution, with this being secured through the s106 Unilateral Undertaking.

*Recreational pressure mitigation – New Forest*

- 5.18. Regarding increased recreation pressure at the New Forest SPA / SAC / Ramsar site, full regard has been had to the position of Natural England and its view that mitigation is required, despite the separation of this designated site/s from the Appeal Site (see **CDH.15** and Appendices 5 and 6 of my proof of evidence).
- 5.19. On 7th December 2021, Fareham Borough Council's Executive Committee agreed with the recommendation to adopt an Interim Mitigation Solution (see **CDH.19** and **CDH.20** and Annex 9 of the sHRA at Appendix 1 of my proof).
- 5.20. 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. The measures also include monitoring and a contribution towards access management and wardening at the New Forest SPA / SAC itself. 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 the delivery of up to 125 units.
- 5.21. Furthermore, additional security in relation to matters concerning recreational effects is achieved through the delivery of the on-site open space (including community park). This is to be viewed as a net benefit of the Appeal Proposals, giving further comfort as to the efficacy of the proposed measures. To elaborate on that point, the required level of mitigation to pass the legal test (of the Habitats Regulations) is to be secured through the s106 commitment in relation to the Council's Interim mitigation strategy. This is a matter which is agreed within the SoCG pertaining to ecology and nature conservation [**CDH.3**]. If there is something else which clearly has a role in reducing any perceived effects (i.e. it provided an additional buffer) – it should be viewed as a further / additional benefit.

- 5.22. Importantly, it is my understanding that the Interim mitigation scheme was produced in consultation with Natural England. It is also my understanding that, the scheme has been approved by Natural England. This is very clearly stated in the letter from FBC to PINS (dated 3<sup>rd</sup> December 2021) regarding the Examination of the Fareham Local Plan 2037 (see extract provided at Appendix 7 of my proof of evidence). It is stated:

*“The Council has published an Interim Mitigation Scheme to provide mitigation for recreational disturbance impacts generated by new residential development within the 13.8km Zone of Influence within Fareham Borough. The **Interim Scheme has been produced in consultation with and approved by Natural England.** The Interim Mitigation Scheme will be presented at a meeting of the Council’s Executive on 7<sup>th</sup> December 2021 for approval. Subject to that decision, the Planning Committee will be advised of the mitigation approach to be considered as a material planning consideration in their determination of planning applications which will enable the Local Planning Authority to secure appropriate mitigation.”*

[Emphasis added]

Summary conclusions in relation to the integrity test

- 5.23. None of the mitigation measures proposed are untested or novel, and the Competent Authority can be certain as to the efficacy of the approaches described and the measures themselves. Natural England’s formal response in relation to the sHRA has not been received to date (see Appendix 8 of my proof of evidence). However, I consider that sufficient information is contained within Appendices 3 to 7 of my proof in order to understand the position of Natural England, that being, the proposed mitigation / avoidance measures are appropriate and proportionate, and that no adverse effect on Integrity arises in respect of any relevant Habitats Site.
- 5.24. By way of overall conclusion, it can be concluded beyond reasonable scientific doubt that the Appeal Proposals deliver appropriate and proportionate mitigation / avoidance measures where required, and that subject to the securing of these measures, no adverse effect on the Integrity of any European / Ramsar site (Habitats site) will occur.

## **6. CONSIDERATION OF THE APPEAL PROPOSALS IN THE LIGHT OF THE RELEVANT DEVELOPMENT PLAN, REASONS FOR REFUSAL AND THE COUNCIL'S STATEMENT OF CASE**

6.1. The relevant development plan comprises the following:

- National Planning Policy Framework NPPF published in 2021;
- Fareham Borough Local Plan Part 2: Development Sites & Policies (adopted June 2015); and
- Emerging Fareham Borough Local Plan 2037.

6.2. Relevant policies are described in detail within the proof of evidence of Mr Burden (on behalf of the Appellants) and within the Council's SoC. I do not repeat all of the detail of the relevant policies within my proof of evidence but instead refer the Inspector to these documents. I do however summarise salient policy prescriptions of the development plan below and I then address the issue of compliance with the development plan.

### **Relevant planning policy**

#### National Planning Policy Framework (2021)

- 6.3. Guidance on national policy for biodiversity and geological conservation is provided by the NPPF, the current iteration of which was published in July 2021.
- 6.4. A key element of the NPPF is that there should be "a presumption in favour of sustainable development" (paragraphs 10 and 11). It is important to note this presumption "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" (paragraph 182). For the avoidance of doubt, "Habitats site" has the same meaning as the still commonly used term 'European protected site'.
- 6.5. Hence the direction of Government policy is clear; that is, the presumption in favour of sustainable development is to apply in circumstances where there is the potential for an effect on a European site, but where it has been demonstrated that there will be no adverse effect on the Integrity of that designated site (through an Appropriate Assessment), as a result of the development in prospect.
- 6.6. The revised NPPF (2021) is comparable to previous versions, including reference to minimising impacts on biodiversity and pursuing net gains for biodiversity (paragraphs 174, 179 and 180) and ensuring that Local Authorities place appropriate weight to statutory and non-statutory nature conservation designations, protected species and biodiversity.
- 6.7. The NPPF also considers the strategic approach that Local Authorities should adopt with regard to the protection, maintenance and enhancement of green infrastructure, priority habitats and ecological networks, and the recovery of priority species.

6.8. Paragraph 180 states:

*“When determining planning applications, local planning authorities should apply the following principles:*

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>63</sup> and a suitable compensation strategy exists; and*
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”*

6.9. Paragraph 181 of the NPPF confirms that the protection given to European sites extends to include potential SPAs, possible SACs, listed or proposed Ramsar sites and sites identified (or required) as compensatory measures for adverse effects on such sites.

6.10. National policy therefore implicitly recognises the importance of biodiversity and that with sensitive planning and design, development and conservation of the natural heritage can co-exist, and benefits can, in certain circumstances, be obtained.

Fareham Local Development Framework Core Strategy 2011

6.11. Core Strategy **[CDE.1]** policy **CS4** is a broad policy relating to the protection of designated sites, woodland, the coast and trees and it sets out the hierarchy to apply in relation to such protection.

6.12. Policy CS4 also states that in order to prevent adverse effects upon Habitats Sites, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting such sites from recreational pressure and development. In addition, the policy outlines the monitoring commitments associated with the efficacy of strategic level Habitats Site mitigation, and also objectives for biodiversity enhancements and provision of green infrastructure.



Local Plan Part 2: Development Sites & Policies (adopted June 2015)

- 6.13. Those policies of direct relevance are policies DSP13 and DSP15 [see CDE.2]. It should be noted that Policy DSP14 relates to supporting habitat for Brent Geese and waders (qualifying interest features of Solent SPAs and Ramsar sites). The Appeal Site does not comprise 'supporting habitat for Brent Geese or waders' so this policy is not relevant to the Appeal Proposals.

- 6.14. Policy **DSP13** states:

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

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

*Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that (this section of the policy should not be applied to impacts on SPA designated sites which are subject to stricter protection tests as set out in The Conservation of Species and Habitats Regulations (as amended) 2010);*

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

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

- 6.15. Policy **DSP15** is concerned specifically with recreational disturbance on the Solent SPAs. It states:

*"In Combination Effects on SPA*

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

### Direct Effects on Special Protection Areas

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

### Emerging Fareham Borough Local Plan 2037

- 6.16. Those policies of relevance are policies DS1, NE1, NE3 and NE4 [see CDF.5].
- 6.17. Policy **DS1** is restraint policy concerning development in the countryside. It requires that acceptable development will (*inter alia*) need to conserve and enhance sites of biodiversity value.
- 6.18. Policy **NE1** relates to the protection and enhancement of ecological assets, including (*inter alia*) designated sites. It states:

*"Development will be permitted where:*

- a) Designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations; and*
- b) Protected and priority habitats and species, including breeding and foraging areas are protected and enhanced; and*
- c) Proposals do not prejudice the Ecological Network or result in its fragmentation.*

*Development within the Borough whose primary objective is to conserve and enhance biodiversity (including the Local Ecological Network), geodiversity and natural resources through restoration, re-creation or management will be supported."*

- 6.19. Policy **NE3** is concerned specifically with recreational disturbance on the Solent SPAs. It states:

*"Planning permission for proposals resulting in a net increase in residential units will be permitted where a financial contribution is made towards the Solent Recreation Mitigation Strategy.*

*In the absence of a financial contribution towards the Solent Recreation Mitigation Strategy, proposals will need to avoid or mitigate any 'in combination' negative effects from recreation through a developer-provided package of measures for the lifetime of the development."*

- 6.20. Policy **NE4** is concerned specifically with water quality effects on the Solent SPAs, SACs and Ramsar sites of the Solent. It states:

*“Planning permission will be granted where the integrity of the designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.”*

### **Consideration of compliance with the development plan**

- 6.21. I have described above, those policies within the development plan which are of direct relevance to the matters addressed within my proof of evidence. I now discuss why I consider that the Appeal Proposals are fully compliant with the development plan.
- 6.22. First I draw attention to the fact that the only issues raised by FBC within its deemed RfR and SoC relate to matters concerning Habitats Sites. It is common ground between the Appellants and FBC that all other matters relating to ecology and nature conservation, for example those relating to protected species, habitats of ecological value and the ability of the Appeal Proposals to deliver a net gain for biodiversity, are fully addressed and no issues arise. This agreed position is clearly reflected in the SoCG in respect of ecology and nature conservation **[CDD.3]**. Insofar as matters concern ecology and nature conservation, FBC is therefore correct to focus upon those policies of relevance to the protection of Habitats Sites within its SoC.
- 6.23. I have described in Section 5 of my proof of evidence (with reference to the project specific sHRA (at Appendix 1 of my proof) those likely significant effects which are considered to arise and those mitigation / avoidance strategies which, when implemented, will allow a safe conclusion that no adverse effect on the Integrity of any Habitats Site will arise.
- 6.24. I have previously discussed that the Appellants are committed to paying the relevant tariff in relation to the Solent Recreation Mitigation Strategy and that this would be secured through the s106 (Unilateral Undertaking), which is standard practice. This being the case, the Appeal Proposals are fully compliant with specific policies **DSP15** of the adopted Local Plan part 2 (2015) and **NE3** of the emerging Local Plan.
- 6.25. In relation to matters concerning nutrient neutrality, I have previously described that the Appellants have undertaken the necessary nutrient nitrogen calculations and determined the required level of mitigation. That mitigation is achieved through both on-site and off-site measures, with an appropriate contract in place in relation to the securing of the off-site mitigation ‘credits’. The 3.72ha of mitigation land within the proposed community park is secured in the s106 Unilateral Undertaking and the park is due to be transferred to the Council, therefore the mitigation land will be controlled / owned by FBC. It is noted that FBC confirms within its SoC that such matters are fully resolved. The Appeal Proposals are therefore fully compliant with specific policy **NE4** of the emerging Local Plan.
- 6.26. Regarding matters concerning increased recreational pressure at the New Forest Habitats Sites, I have explained that FBC have an agreed and adopted Interim mitigation strategy and that the Appellants are committed to making the relevant financial contribution towards that scheme. That financial contribution will be secured through a suitable legal obligation. I have also discussed that in addition to payments towards the Interim mitigation strategy, the Appeal Proposals deliver a significant amount of open space (e.g. community park)

which gives further comfort regarding the ability of the proposals to reduce the possibility of new residents (and existing local residents) accessing the New Forest (and other designated sites) on a regular basis. In this light, I have concluded that no adverse effect on the Integrity of the New Forest Habitats Sites arises.

6.27. In view of all the above points, subject to the securing of the Habitats Sites mitigation measures through the s106, the Appeal Proposals are fully compliant with all relevant policies of the NPPF, the adopted Local Plan and the emerging Local plan.

6.28. FBC are correct to highlight (see paragraph 10.10 of the Council's SoC) that in relation to Habitats Sites:

*"However, these effects should be capable of being mitigated through a section 106 agreement or unilateral undertaking."*

6.29. My own assessment of the Appeal Proposals against the tests of the Habitats Regulation and the development plan also confirms this.

6.30. Following from the above, there is no requirement to move to address the derogation tests of the Habitats Regulations since there is confirmation of no adverse effect on the Integrity of any Habitats Site. Further, given this conclusion, the policy test at paragraph 182 of the NPPF is passed and the presumption in favour of sustainable development is re-engaged. The tilted balance applies.

#### Biodiversity Net Gain

6.31. 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.

6.32. Indeed, as referenced within the agreed SoCG **[CDD.3]**, 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. For reference, in this regard I draw the Inspectors attention to paragraphs 22 and 23 of the SoCG **[CDD.3]**.

6.33. With specific regard to the development plan in relation to biodiversity net gain, I have described above that the NPPF (at paragraphs 174, 179 and 180) requires developments to deliver net gains for biodiversity. The NPPF does not however prescribe a value or figure to the level of net gain which should be deemed acceptable in the context of the policy framework.

6.34. Furthermore, with reference to paragraphs 6.11 to 6.20 of my proof of evidence, whilst the adopted and emerging Local Plans encourage the inclusion of biodiversity enhancement measures, again neither prescribe a value or figure to the level of net gain which should be deemed acceptable.

6.35. I am 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.

- 6.36. I have described above, that there is no issue between the Council and the Appellants in relation to whether enhancements for biodiversity are achieved through the appeal schemes. For the inspectors benefit however, Ecology Solutions has undertaken a series of Biodiversity Net Gain (BNG) calculations in order to demonstrate, in quantifiable terms, the level of net gain for biodiversity which can be achieved.
- 6.37. Included at Appendix 9 of my proof of evidence are three versions of the completed DEFRA Metric v3 (the current version of the metric). In each instance the assessment has been undertaken based on the illustrative masterplan [at **CDA.19** and **CDA.46**].
- 6.38. The Appeals relate to Outline planning applications and the fine detail of the landscape and planting strategies would be agreed at the Reserved Matters stage. Consequently, any assessment at this stage can only be based upon the illustrative proposals and is unlikely to be a totally accurate reflection of the final BNG score for the scheme. The calculations are presented as a guide to show what could be delivered and I have presented three scenarios in order to demonstrate that even by taking a very conservative approach to assessment, significant gains for biodiversity can be achieved. The results are summarised and discussed below.
- 6.39. Under the first scenario, a 'Habitat BNG' score of **34.81%** is achieved. This score is achieved on the basis that retained grassland (primarily located in the proposed community park) is enhanced from 'poor' to 'good' condition. The score also reflects enhancements to woodland and scrub habitat as well as the creation of new habitats (in place of existing) for example, drainage / attenuation features and new tree planting.
- 6.40. Under the second scenario, a 'Habitat BNG' score of **23.83%** is achieved. This score is achieved on the basis that retained grassland (primarily located in the proposed community park) is enhanced to 'moderate' condition. All other parameters are consistent with the scenario one assessment.
- 6.41. I have presented the second scenario assessment on the basis that that the community park will be used as a recreational resource for new and existing residents. That has the potential to temper the level of enhancement which can be achieved, for example through *inter alia*, trampling of vegetation and localised enrichment through dog fouling. Whilst my judgement is that 'good' condition could easily be attained over a significant area of the community park, and both habitat and visitor management initiatives would play a key role in minimising / localising any impacts on grassland quality, it is prudent to apply an element of caution.
- 6.42. Regarding scenario two (23.83% net gain), as can be seen at Appendix 9 the metric flags that "trading rules" are not satisfied. This relates to the fact that by simply dropping the retained / enhanced grassland target condition from 'good' to 'moderate' (the difference between the first two assessed scenarios) the

metric flags that losses occurring to the existing grassland<sup>1</sup> from the new built form are not sufficiently outweighed by the enhanced grassland delivered elsewhere. The metric of course works on a holistic basis factoring in all impacts (positive and negative) on all habitats, so it is possible to have an imbalance as far as one particular habitat is concerned, whilst still achieving a positive overall net gain score. This being the case, my approach has been to address the imbalance identified.

- 6.43. A third scenario has therefore also been assessed. This scenario specifically addresses the 'trading deficit' identified under the second scenario. Whilst there would be a multitude of ways in which the imbalance could be addressed within the metric calculations, the approach taken in the third scenario is to identify an area (value) of existing grassland which could be enhanced to 'moderate' condition, in lieu of delivering new woodland planting (which is extensive).
- 6.44. It has been identified that the trading imbalance is addressed by retaining and enhancing an additional 0.25ha of grassland, in lieu of planting woodland over that same area. It should be noted that under this scenario, significant new woodland planting is still delivered (circa 2ha) alongside enhancements to existing woodland. As an example, this small area of additional enhanced grassland could be located in the southeast of the community park where it had been envisaged that a large block of woodland / shrub planting will be delivered. In true ecological terms, the effect of such a change is nugatory given the overall package of habitat creation and enhancement measures.
- 6.45. Under the third scenario a 'Habitat BNG' score of **24.46%** is achieved.
- 6.46. As I have previously explained, these assessments are provided as a guide given that only an illustrative masterplan can be assessed, and none are likely to be a totally accurate reflection of the final BNG score for the scheme. What can certainly be concluded however, is that the Appeal Proposals can deliver a minimum BNG for habitats in excess of **20%**.
- 6.47. An important point arise is view of all three BNG assessments. That is, that under each scenario there is a deficit in relation to the hedgerow assessment of -5.8%.
- 6.48. Regarding the hedgerow deficit, this would be overcome through the delivery of new species rich hedgerow planting within the landscape strategy. The delivery of **400m** of new hedgerow (in total) would give rise to a hedgerow BNG score of **+10%**. The significant provision of open space as part of the Appeal proposals, including the community park, means that there is more than sufficient land available to deliver this quantum of hedgerow habitat.
- 6.49. It should be noted that for BNG assessment purposes, there is no need to reassess the 'Habitat' element of the proposals on the basis that additional hedgerow would be within an area previously assessed as grassland, for example. The hedgerow assessment is a separate, linear habitat assessment which does not allow for / include hedgerow widths. Indeed, the guidance relating to the DEFRA BNG metric, specifically states that where hedgerows occur, the boundaries of adjacent habitats should be taken as the central point of the hedgerow (i.e. hedgerows are explicitly excluded within the Habitat BNG assessment).

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<sup>1</sup> The grassland is classified as being of 'moderate distinctiveness' within the metric.

- 6.50. Regarding the above points concerning BNG, including the hedgerow deficit, there is of course scope to tailor any forthcoming detailed proposals to deliver specific habitats at a specified minimum quantum or quality, and / or attain a specific BNG score where considered necessary.
- 6.51. Noting that there is no legal or planning policy requirement to deliver a specific percentage of BNG and that a gain of 1% (for example) would be compliant with the development plan, the Appeal Proposals can deliver BNG well in excess of any requirements. Indeed, even if 10% BNG were mandatory at this stage, this could be significantly exceeded. The ability of the Appeal Proposals to deliver this level of BNG should be given weight within considerations relating to planning balance.

## 7. SUMMARY AND CONCLUSIONS

- 7.1. Ecology Solutions was originally instructed by Reside Developments Ltd. to undertake a Phase 1 walkover survey of Land South of Funtley Road, Funtley (the "Appeal Site") in May 2016 in order to determine potential ecological constraints associated with the site. Subsequent to this, a series of detailed surveys were undertaken in order to inform a planning application. Planning permission was subsequently granted for that scheme (55 dwellings) by FBC. Ecology Solutions was then commissioned to undertake additional survey and assessment work in 2020 pursuant to a new planning application.
- 7.2. Under the 2020 planning application (P/20/1168/OA), Outline permission was sought 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 & F.2) with associated infrastructure, new community park, landscaping and access, following demolition of existing buildings. A parallel planning application (P/20/1166/CU) was also made in respect of a change of use of land, from equestrian / paddock to community park following demolition of existing buildings.
- 7.3. Appeals were lodged by the Appellants in respect of FBC's failure to determine the planning applications.
- 7.4. With reference to the Council's SoC, cited RfR "C" and D" relate to nature conservation matters and are of direct relevance to my proof of evidence.
- 7.5. RfR C states:
- "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."*
- 7.6. RfR D states:
- "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 17 other developments, would arise due to the impacts of recreational disturbance."*
- 7.7. In addition, within its SoC, FBC cite issues relating to an additional European Protected site, the New Forest SPA, SAC and Ramsar site. The points raised concern increased recreational pressure at these designated sites and in particular, Natural England's advice that new residential development within the borough of Fareham, which falls within an identified "Zone of Influence" will need to provide appropriate mitigation. Whilst not a RfR, the matter is considered material to this Appeal and I have addressed the issue in detail within my proof of evidence.
- 7.8. Matters regarding Appeal APP/A1720/W/21/3284532 / planning application P/20/1166/CU are uncontested between the parties. The Council's Planning Committee resolved that, had members been able to determine the planning application, they would have granted planning permission for those proposals, subject to the application of conditions.



- 7.9. Having regard to the Council's SoC, matters concerning ecology and nature conservation can be distilled down to the simple matter of ensuring the legal security on the delivery of the required mitigation.
- 7.10. The Council has confirmed (see paragraphs 5.5, 5.6 and 5.7 of its SoC) that matters concerning nutrient nitrogen have been fully addressed. RfR C has therefore fallen away.
- 7.11. Regarding RfR D which is concerned with recreational impacts on Solent European protected sites, the Council has confirmed (see Paragraphs 5.4 and 9.45 of the Council's SoC) that this issue can be fully addressed through the s106. The s106 Unilateral Undertaking provides security regarding the appropriate level of mitigation contribution. This matter is therefore fully addressed.
- 7.12. Insofar as matters concern the New Forest SPA / SAC / Ramsar site, this is a comparatively new issue, discussed within the Council's SoC but not the subject of a RfR. Nonetheless, the Council has now adopted an interim strategic approach to mitigation in respect of this issue and within its SoC, the Council confirms that (alongside RfR C and D), this issue can be dealt with through the s106. The Appellants have agreed to ensure that the appropriate financial contribution is secured through the s106 Unilateral Undertaking. Additional comfort on this matter is provided through the delivery of a large area of open space (e.g. Community Park) on the doorstep of new residents. This can be seen as a further benefit of the Appeal Proposals when considering effects of recreational pressure on relevant designated sites.
- 7.13. I would draw the Inspectors attention to the fact that, in each instance a form of mitigation / avoidance is proposed which is in common use and represents an agreed approach with Natural England. The Solent Recreation Mitigation Strategy is well established and has been fully signed off by Natural England. The methodology for calculating nutrient nitrogen impacts was published by Natural England and the (secured) off-site mitigation scheme has been agreed by Natural England. It is also understood that Natural England have agreed the Council's Interim approach to mitigating recreational effects at the New Forest SPA / SAC / Ramsar site. The Inspector can take comfort from the fact that the statutory authority is content with these mitigation mechanisms.
- 7.14. The sHRA produced by Ecology Solutions concluded that no adverse effect on the Integrity of any Habitats Site arises, subject to the securing of the Habitats Sites mitigation measures through the s106. Through my evidence I have demonstrated that the Appeal Proposals are fully compliant with all relevant legislation and planning policies of the NPPF, the adopted Local Plan and the emerging Local plan. In addition, since it can be safely concluded that no adverse effect on the Integrity of any Habitats Site arises, the policy test at paragraph 182 of the NPPF is passed. The presumption in favour of sustainable development is re-engaged and the tilted balance applies.
- 7.15. In relation to BNG, there is no legal or planning policy requirement to deliver a specific percentage of BNG and any gain (1% for example) would be compliant with the development plan. The Appeal Proposals can deliver BNG well in excess of any requirements. Indeed, even if 10% BNG were mandatory at this stage, this could be significantly exceeded, and it has been calculated that a BNG score in excess of 20% will be achievable. The ability of the Appeal

Proposals to deliver this level of BNG should be given weight within considerations relating to planning balance.



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