

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEALS

APPEALS by **Reside Developments Ltd and Atherfold Investments Ltd** against the non-determination by **Fareham Borough Council** of

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

(2) *"Change of Use of Land from Equestrian/Paddock to Community Park Following Demolition of Existing Buildings"*

on **Land South of Funtley Road, Funtley, Fareham**

Planning Inspectorate References: APP/A1720/W/20/3283643 & 4532

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

**PROOF OF EVIDENCE OF
STEPHEN JUPP MRTPI
ON BEHALF OF
FAREHAM BOROUGH COUNCIL
IN RESPECT OF PLANNING AND
ACCESSIBILITY MATTERS**

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Appendices

NB: Any references to Appendices FBC.1 to FBC.26 are those attached to the Council's Statement of Case and which are not included in the Core Document list.

FBC.27 Appeal decision - Land east of Crofton Cemetery, Stubbington.
(Appeal ref 3275237)

FBC.28 Five Year Housing Land Supply Position Report dated January 2022

FBC.29 Local Transport Note 1/20 'Cycle Infrastructure Design' dated July 2020

1.0 INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1. I am a member of the Royal Town Planning Institute. I hold an Upper Second Bachelor of Arts (Honours) Degree in Town and Country Planning and a Master of Laws with Merit in Environmental Law.
- 1.2. I have been employed for some 34 years in town and country planning. I have been a self-employed planning consultant since April 2000. Previously, I was employed at Chichester District Council and Havant Borough Council.
- 1.3. I handle planning policy, landscape impact and enforcement issues on a daily basis. I have extensive experience in dealing with such issues at planning application stage. I have also given planning policy, landscape impact and enforcement evidence in the High Court and at public inquiries and hearings for both local authorities and developers.
- 1.4. I have been brought in by Fareham Borough Council (the Council) to act on their behalf in connection with appeal proceedings relating to this land. I undertook a site visit in November 2021. I am therefore familiar with the site and its surroundings.
- 1.5. Although I act on behalf of the Council, I understand my professional duty is to assist the Inspector by providing evidence which is true and has been prepared and is given in accordance with guidance produced by the Royal Town Planning Institute. In this regard I can confirm that the opinions expressed are my true and professional opinions.
- 1.6. The appeals were submitted following the LPA's failure to determine an outline application (ref: P/20/1168/OA) for residential development (*'the residential development'*) and a full application (ref: P/20/1166/CU) for a community park (*'the community park'*) on Land to the South of Funtley Road Fareham (the 'Appeal Site') within the agreed time period. For clarity these appeals will be referred to as Appeal 1 (3283643 – the residential appeal) and Appeal 2 (3284532 – the community park appeal) respectively.

- 1.7. As set out in the Council's Statement of Case, the Council opposes Appeal 1 but not Appeal 2, and my evidence therefore only addresses Appeal 2 as necessary in connection with Appeal 1. My evidence first sets out the planning policy relevant to these appeals along with the relevant planning history. Then I consider the planning merits of the Appeal 1 development, having regard to the latest housing supply figures and other material considerations including the accessibility of the site; and, drawing on the conclusions of the Council's expert witnesses in respect of landscape and design matters.
- 1.8. The Council's landscape expert, Ian Dudley, has carried out a detailed analysis of the anticipated landscape and visual impacts of the proposed residential development upon the Site and its setting, to inform the Inspector's consideration of Appeal 1. He sets out his independent appraisal of the Site and its landscape and visual characteristics, and the anticipated impacts of the proposed development, based upon the assessment framework within the Lockhart Garratt Landscape and Visual Impact Assessment Methodology.
- 1.9. In the light of this he makes clear that the Appeal Sites are part of a 'valued landscape' and that the Appeal 1 proposal is inappropriate on both landscape and visual grounds. As a result, as he makes clear in paragraph 1.15 of his Proof, his evidence has been found to support the landscape element of the Council's putative Reason for Refusal (a) for the Appeal 1 scheme, which reads as follows:
- 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.*
- 1.10. The Council's expert design witness, Philip Russell-Vick, reviews the Council's Urban Designer's consultation comments and the response provided by the appellants; and provides his appraisal of the design of the Appeal 1 proposal. He then considers these and the quality of

the proposals and the response to the key characteristics of the area, in the context of the Framework, the PPG, the National Design Guide, local planning policies and the local design SPD.

- 1.11. In his evidence he concludes that the design harm he identifies supports the design element of the Council's putative Reason for Refusal (a) for the Appeal 1 scheme (set out at paragraph 1.9 above).
- 1.12. Drawing on their expert opinions, and other material considerations, and assuming that habitat impacts are satisfactorily addressed and the required unilateral undertaking[s] executed (so resolving putative reasons for refusal (c) to (h)), I find the appeal development to be contrary to Development Plan Policies CS5, CS14, CS15, CS17, DSP6 and DSP40. I also find conflict with paragraphs 126, 130 and 174 of the Framework, the National Design Guide, the Fareham Borough Design Guidance SPD, and policies DS1, DS3, HP4, D1 and HA10 of the emerging Local Plan. I then undertake a planning balance, weighing up the identified harms against the identified benefits. I conclude planning permission should not be granted. The appeal should therefore be dismissed.
- 1.13. Throughout my proof references are made to documents provided by both sides which are already before the Inspector and now form part of the Core Document list. If a document is listed as a Core Document I will use the prefix "CD" and if the document is not on the CD list then I will use the prefix "FBC" and append it to my proof (unless already appended to the Council's Statement of Case).

2. APPEAL DEVELOPMENTS AND SITE DESCRIPTION

Appeal 1

- 2.1. Outline planning permission is sought for the construction of up to 125 homes comprising a mixture of one, two, three and four bed dwellings and including six self or custom build plots. Also proposed is a community building or local shop (falling within use class E & F2 respectively) and associated infrastructure, open space, landscaping and access following the demolition of the existing buildings on the site presently. All matters are reserved except for the means of access.
- 2.2. The scheme proposes to reuse and amend the existing vehicular access into the site. The submitted drawing (drawing no. 1908016-01 Rev E) **CDA.37** shows the proposed access arrangements with a 7.86m wide carriageway at the junction with Funtley Road narrowing to 6.0m. A swept path analysis drawing (drawing no. 1908016-TK03 Rev B) **CDA.41** shows how a standard 12m bus would be able to enter and exit the junction.
- 2.3. Matters of scale, appearance, layout and landscaping are to be reserved. However, the appellants have submitted a number of parameter plans [**CDA.18, 20 & 21**] (which would become approved documents in the event planning permission was to be granted on appeal) and an illustrative masterplan **CDA.19** (which is for illustrative purposes only and would not be an approved plan).
- 2.4. The plans show the developable areas of the site where housing and roads would be built. There are broadly three of these areas shown on the parameter plans divided by what are referred to as "green links" with "rural edge green space" around the perimeter. The housing within the developable areas would be two storey in scale (with up to 2.5 storey key buildings) with the exception of an area along the southern edge of the development which would be limited to 1.5 storeys.

- 2.5. In terms of density, the parameter plans show three bands of descending density the further the development extends from Funtley Road – up to 40 dwellings per hectare (dph), up to 35dph and up to 25 dph. A locally equipped area of play (LEAP) would be sited close to the southern boundary of the site. The community building/local shop would be located near to the vehicular entrance from Funtley Road.
- 2.6. A pedestrian and cycle public right of way is proposed through the site from Funtley Road (north) to Thames Drive (south). The right of way would pass through the appeal 2 site which would be secured as a new community park as part of this proposal.
- 2.7. All matters are reserved except access. The application drawings and documents are provided at **CDA.1 to 42.**

Appeal 2

- 2.8. Permission is sought to change the use of the land to a community park. The application has been submitted by the same applicants (now appellants) and at the same time as the proposal for residential development of up to 125 dwellings on land between the site and Funtley Road to the north (Appeal 1). As part of that development the appellants proposed the community park be set out and provided to Fareham Borough Council as a community benefit of the appeal 1 scheme. The park would be the subject of a unilateral undertaking pursuant to Section 106 produced by the appellants as part of the appeals now lodged.
- 2.9. The proposal is near identical, except for slight reduction in site area, to one that was approved in 2018 (planning reference P/18/0066/CU).
- 2.10. The application drawings and documents are provided at **CDA.43 to 61.**

Site Description

- 2.11. The appeal 1 site, the land edged-red on the submitted Site Location Plan (**CDA.17**), comprises a 6.09ha site on land to the south of Funtley Road. The site lies outside of the defined urban settlement boundary. The redline area is broadly similar to the consented application and the emerging HA10 allocation, but extends further to the south into land designated as countryside (DS1), strategic gap (DS2), area of special landscape quality (DS3), and public open space (NE10) under the emerging Local Plan.
- 2.12. The site comprises grass land used for the grazing of horses and associated stabling and other structures, including a larger barn towards the eastern end of the site. A portion of the western part of the site is designated in the adopted local plan as an area of existing public open space and lies adjacent to The Deviation Line, a public bridleway (Bridleway 515).
- 2.13. The land rises from north to south away from the road. Alongside Funtley Road runs an established mature hedgerow, with some trees in places along that boundary. This vegetated frontage is broken at two points; firstly where the existing vehicular entrance to the site is located towards the site's eastern end on the opposite side of Funtley Road to the southern end of Stag Way (which is closed to vehicular traffic), and secondly where relatively recently in May 2020 a new gate was formed further west along Funtley Road initially to provide alternative day-to-day access into the site but currently not used for such purposes.
- 2.14. On the opposite side of Funtley Road to the north lies the existing housing development of Roebuck Avenue/Deer Leap/Stag Way which was built on the site of the former abattoir following planning permission being granted in 1997. To the west of that housing, also opposite the current appeal 1 site on the northern side of the road, lies a site where a development of 27 houses is nearing completion. The land on the northern side of Funtley Road is not within the defined urban settlement boundary as shown on the proposals map

accompanying the adopted local plan. The nearest edge of the urban settlement boundaries lies further to the east on the eastern side of the railway line.

- 2.15. The land to the south of the appeal 1 site, including Great Beamond Coppice, is subject of appeal 2. The appeal 2 site measures approximately 9.88ha in size. As with the appeal 1 site, it is located entirely outside the defined urban settlement boundary. The open land on the site comprises mainly paddocks and fields used for the keeping and grazing of horses.
- 2.16. The landform begins to notably rise above 25m contour within the appeal 1 site, and continues to rise within the appeal 2 site, to an upper height of approximately 55m AOD. This land, which occupies the higher slopes of the hill, is also currently given over to use as paddocks. A group of larger agricultural buildings and stables is located near the highest point of the land and these buildings and the surrounding paddocks are accessed via a track which runs from the entrance to the site at Funtley Road. In November 2020 planning permission was granted for this track (planning reference P/20/0809/FP) [the decision notice is at **CDH.32** and the permitted site plan at **CDH.33**] which replaces the vehicular access previously provided via another track up the hill through an area of mature woodland but which is now used as a permissive path for pedestrians and cyclists (secured through the Section 106 legal agreement for the development of 27 houses on the north side of Funtley Road). The woodland the permissive path runs through (Great Beamond Coppice), within the appeal 2 site and bordering the appeal 1 site to the south-east, is designated as an Ancient Woodland Site of Importance for Nature Conservation (SINC).
- 2.17. To the south of the appeal 2 site lies the M27 motorway. The permissive path through the land leads to a bridge over the M27 providing pedestrian and cycle access to the southern side of the bridge where the urban area of Fareham lies. On the immediate south side of the bridge is a designated public footpath running east to west (Footpath 91a).

- 2.18. In landscape terms, Natural England's National Character Assessment [**CDH.34**] places the appeal sites within the South Hampshire Lowlands National Character Area.
- 2.19. At a county level, the Hampshire Integrated Character Assessment **CDG.3** places the sites on the eastern edge of the Meon Valley (3e) Landscape Character Area, which is associated with the 'Lowland Mosaic Medium Scale' Landscape Character Type.
- 2.20. At a local level, the Fareham Landscape Character Assessment **CDG.2** places the sites within the Meon Valley (6) Landscape Character Area, associated with the 'Mixed Farmland and Woodland: Small-Scale' Landscape Type.
- 2.21. The landscape character of the sites themselves and their immediate setting are primarily influenced by two factors. The first is the landform of the small tributary valley in which they are located, the steep slopes of which lend the upper parts of the appeal 1 site and the appeal 2 site a pronounced northerly aspect and afford long views over the surrounding countryside from the upmost parts. The second is the sense of enclosure in the lower valley provided by the combination of the M27 to the south, the Deviation Line to the west and the railway to the east.
- 2.22. With regard to the inherent value of this landscape, and its treatment in policy, the southern part of the appeal 1 site and the appeal 2 site are proposed to be designated, along with the wider Meon Valley, as an Area of Special Landscape Quality under Policy DS3 of the emerging Local Plan, indicating that it possesses special qualities worthy of protection. The part of the appeal 1 site subject to the emerging HA10 allocation is not included in the proposed designation. It is important to consider, however, that there is no clear delineation between the HA10 area and the remainder of the appeal sites, and as such it is the view of the Council's landscape witness, Ian Dudley, that the combined area of the appeal 1 and appeal 2 sites should be treated as a single landscape unit which is a 'valued landscape'.

- 2.23. In chapter 2 of Ian Dudley's evidence, he refers to the 2020 Technical Review of Areas of Special Landscape Quality and Strategic Gaps [CDG.4] and notes at 2.21 that the recommendations on page 66 of the Technical Review conclude that the area satisfies the criteria to qualify as a 'valued landscape' and recommends that the boundary be extended to match those of the Meon Valley Landscape Character Area, which includes the aforementioned land to the south of the Site. It notes that the designation should exclude the 'built and allocated parts of Funtley', which includes the emerging Policy HA10 allocation due to its allocation under the emerging Policy HA10, and this is shown on the map on page 68.
- 2.26 Based upon the conclusions of the Technical Review and Mr Dudley's assessment, it is the Council's view that the landscape in which the appeal sites are located is a 'valued landscape' for the purposes of paragraph 174(a) of the NPPF.
- 2.27 In any case, should it be subsequently found that the sites (or either of them) are not located within a 'valued landscape', there is nonetheless an obligation under paragraph 174(b) of the NPPF to recognise the intrinsic character and beauty of the countryside, and therefore any significant landscape or visual harm arising from development activity should be a material consideration within the overall planning balance.

3. RELEVANT PLANNING HISTORY

3.1 Outline planning permission was previously applied for by the same applicants (now appellants) for a development of up to 55 dwellings (including three custom-build homes, a community building incorporating a local shop and associated landscaping, infrastructure and development works). That application was considered by the Council's Planning Committee in October 2018 and a resolution to grant permission made. Planning permission was granted in September 2020 and a further Officer report was produced. The permission granted is referred to throughout the remainder of this Proof as the "2020 consent".

3.2 The October 2018 report to the Planning Committee set out the relevant material planning considerations. At the time the Council could demonstrate a housing land supply position of 4.95 years meaning that, by virtue of not being able to demonstrate a five year housing land supply, the contingency position set out in Policy DSP40 of the adopted Fareham Borough Local Plan Part 2 was engaged.

3.3 In relation Policy DSP40 Officers considered four of the five tests to be met.

3.4 In relation to Policy DSP40(ii) the report acknowledged that the site is located beyond, and is not located adjacent to, the existing settlement policy boundary. As a result, there was a technical breach of that policy requirement. It continued by saying:

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

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

"Bus stops are located close to the site on Funtley Road and the bus service runs approximately once an hour to Fareham and Wickham. However, the service neither starts particularly early nor finishes late and no buses run on a Sunday. There are very limited services within Funtley itself. The closest shop (McColls Newsagent) in Kiln Road for example is in the region of 1,200 metres (3/4 mile) from the site. Furthermore, Officers are not convinced that the pedestrian and cycling arrangements from the application site to facilities are ideal at present either in the vicinity of the site itself or taking into account the steep climb up from Funtley into Fareham. [In the subsequent final Officer report dated September 2020 it was observed that the bus service had since been re-routed so it does not pass through Funtley village].

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

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

- 3.6 Officers considered the package of measures proposed by the applicants in relation to that first application materially improved the sustainability of the location. In particular the proposed public right of way for pedestrians and cyclists to be formed through the site and over the M27 bridge to the urban area of Fareham was considered to

be an essential element of the proposal delivering sustainable transport links to make the development acceptable in planning terms.

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

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

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

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

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

Whilst matters of scale, appearance, layout and landscaping are all reserved matters, Officers consider the quantum proposed and the parameters set out in the submission mean the proposed development would be capable of being sensitively designed to respond positively to the character of the existing housing development nearby. The work carried out by the

applicant in setting the parameters for development on the site, particularly the incorporation of key 'green' or 'view' corridors through the land, acts to minimise the adverse impact on the landscape character of the countryside."

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

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

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

- 3.10 It was found that the proposal accorded with four of the five criteria in Policy DSP40. Officers considered that, on balance, when considered against the development plan as a whole, the scheme should be approved. The Committee Report is at **CDH.3** and the decision notice is at **CDH.1**.

4. BACKGROUND TO THE APPEALS AND PUTATIVE REASONS FOR REFUSAL

4.1 As noted in section 3 above, the 2020 consent for a 55 dwelling scheme was granted in September 2020.

4.2 A further application, now the subject of appeal 1, was made by the appellants in November 2019 (LPA reference P/20/1168/OA). An appeal (Appeal 1) was lodged on 24th September 2021, and on 2nd November 2021 the Planning Committee considered a report in which Officers recommended the application be refused (**CDC.1**). Members resolved that planning permission would have been refused had there still been the opportunity to determine the proposal (as the minutes of the 2nd November 2021 Planning Committee meeting at **FBC6** show).

4.3 It was RESOLVED that, subject to final comments being received from the highway authority (Hampshire County Council) and authority being delegated to the Head of Development Management to include any additional submissions to the Planning Inspector considered appropriate taking into account those comments, and had members been able to determine the planning application, they would have resolved to REFUSE PLANNING PERMISSION for the following reasons:

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

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

b) The proposal would not be sustainably located;

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

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

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

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

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

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

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

Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points e) - i)¹ 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.

4.5 On 22 November 2021, Aaron Wright of Turleys [the appellants' agent] sent an email to Alison Dyson [the case officer at PINS] which

¹ The reference to (e) to (i) should read (d) to (h).

was copied to Richard Wright [case officer at FBC] in respect of nitrate mitigation. This email and the documents enclosed with it [**FBC7**] confirmed that the appellants had purchased nitrate credits of 39.04 kgN per year from Wanford Estate.

4.6 Richard Wright replied to this email as follows:

The information is presented in a form that has previously been agreed between the Warnford Estate, FBC and SDNPA and it shows that a contract has been entered into by the Appellant to purchase 39.04 kg/N/yr nitrate credits. This would match the sum indicated by the Council in the report to the Planning Committee as the required amount of mitigation. I would suggest this information could be submitted with the Appellant's Statement of Case but I am grateful for advance sight of this which will enable the Council to clarify its own Statement of Case that reason for refusal (c) has been addressed – thank you.

4.7 As set out by Richard Wright, the LPA now consider that refusal reason (c) has been addressed (subject to the mitigation being secured). The LPA also considers that reasons for refusal (d) to (h) are capable of being addressed through a section 106 agreement or unilateral undertaking, together with planning conditions. The agreement on (c) and (d) is set out in the Habitats Statement of Common Ground [**CDD.3**]

4.8 The final application is P/20/1166/CU for "Change Of Use Of Land From Equestrian/Paddock To Community Park Following Demolition Of Existing Buildings". An appeal (appeal 2) was lodged on 8th October 2021, and on 2nd November 2021 the Planning Committee considered a report [**CDC.2**] in which Officers recommended that had the Council been able to determine the application it would be permitted.

4.9 The Committee RESOLVED that, had members been able to determine the planning application, they would have GRANTED PLANNING PERMISSION, subject to the conditions in the report. On this basis the LPA is not offering any evidence on Appeal 2 (save as necessary in connection with Appeal 1) and this Proof concentrates on Appeal 1, the outline housing scheme. Minutes of the meeting are at **FBC9**.

5. PLANNING POLICY CONTEXT

- 5.1 By Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 local planning authorities and Inspectors must determine applications for planning permission and appeals in accordance with the development plan (here, so far as relevant, the Local Plan Parts 1, 2 and 3) unless material considerations indicate otherwise. This section of my proof sets out the relevant planning policy framework for the consideration of these appeals.
- 5.2 The relevant planning policy is set out in section 6.0 of the LPA's Statement of Case and addressed in Section 4 of the Planning SoCG [CDD.1].
- 5.3 The following policies are particularly relevant to the issues at this inquiry. I consider that further elaboration is required in order to explain the Council's case.

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011 [CDE.1]

- 5.4 **Policy CS2** (Housing Provision) makes provision for the supply of 3,729 dwellings in the period 2006 to 2026 from various identified sources of supply (none of which is applicable to the Appeal 1 proposal).
- 5.5 **Policy CS4** (Green Infrastructure, Biodiversity and Geological Conservation) makes provision for, among other things, the protection of important habitats. It emphasises that, where possible, sites will be enhanced. It specifically addresses mitigation of impacts on European sites and states that "Development likely to have an individual or cumulative adverse impact [on European sites] will not

be permitted unless the necessary mitigation measures have been secured.”

5.6 **Policy CS5** (Transport Strategy and Infrastructure) states that the Council will permit development which:

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

5.7 **Policy CS6** (The Development Strategy) states that development will be focussed in various specified areas, which do not include the Appeal 1 Site. It goes on to state that, in identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries (which the Appeal 1 Site lies outside of). It states that opportunities will be taken to achieve environmental enhancement where possible. It also states that development which would have an adverse effect on the integrity of protected European conservation sites which cannot be avoided or adequately mitigated will not be permitted.

5.8 **Policy CS14** (Development Outside Settlements) states that:

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

5.9 Policy CS15 (Sustainable Development and Climate Change) makes clear that the Council will promote and secure sustainable development by directing development to locations with sustainable transport options, access to local services, where there is a minimum negative impact on the environment or opportunities for environmental enhancement.

5.10 **Policy CS17** (High Quality Design) states in part:

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

- respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials,"

5.11 **Policy CS18** (Provision of Affordable Housing) states that, on sites that can accommodate 15 or more dwellings, developers will be expected to provide 40% affordable units.

5.12 **Policy CS20** (Infrastructure and Development Contributions) states that Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider, and that contributions or provision may also be required to mitigate the impact of development upon infrastructure.

5.13 **Policy CS21** (Protection and Provision of Open Space) states that proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided in accordance with specified requirements.

**Local Plan Part 2: Development Sites and Policies – Adopted
8th June 2015 [CDE.2]**

5.14 **Policy DSP1** (Sustainable Development) states:

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

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

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

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

5.15 **Policy DSP6** (New Residential Development Outside of the Defined Urban Settlement Boundaries) states in part:

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

- i. It has been demonstrated that there is an essential need for a rural worker to live permanently at or near his/her place of work; or*

- ii. *It involves a conversion of an existing non-residential building where:*
 - a) *substantial construction and do not require major or complete reconstruction; and*
 - b) *evidence has been provided to demonstrate that no other suitable alternative uses can be found and conversion would lead to an enhancement to the building's immediate setting;*
- iii. *It comprises one or two new dwellings which infill an existing and continuous built-up residential frontage, where:*
 - a) *The new dwellings and plots are consistent in terms of size and character to the adjoining properties and would not harm the character of the area; and*
 - b) *It does not result in the extension of an existing frontage or the consolidation of an isolated group of dwellings; and*
 - c) *It does not involve the siting of dwellings at the rear of the new existing dwellings.*

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

Proposals should have particular regard to the requirements of Core Strategy Policy CS14: Development Outside Settlements, and Core Strategy Policy CS6: The Development Strategy. They should avoid the loss of significant trees, should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts, or detrimental impact on the character or landscape of the surrounding area.' (Emphasis added)

5.16 **Policy DSP13** (Nature Conservation) makes provision for the protection of nature conservation interests. The policy states the circumstances in which proposals may be permitted notwithstanding detrimental impacts, though it notes that this does not apply to impacts on SPAs, where stricter tests apply (under the Conservation of Habitats and Species Regulations 2017).

5.17 **Policy DSP15** (Recreational Disturbance on the Solent Special Protection Areas (SPA)) requires mitigation of recreational impacts of development on the Solent SPAs through, among other approaches, financial contributions.

5.18 **Policy DSP40** (Housing Allocations). The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 (Housing Allocations) makes provision for a situation where there is a shortfall in HLS.

5.19 Having set out the approach to allocated sites for housing, DSP40 then addresses the policy approach to be applied where (as is currently the case) a five year supply of housing cannot be demonstrated:

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

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

5.20 The supporting text to DSP40 explains at 5.163-4 and 5.166 that:

"5.163 The Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery of both allocations and/or commitments. Therefore, further flexibility in the Council's approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets.

5.164 In order to accord with policy CS6 and CS14 of the Core Strategy, proposals for additional sites outside the urban area boundaries will be strictly controlled...

5.166 Protecting the character and beauty of the countryside is an important objective and so the careful design of any proposal will be a key consideration. Any proposal must be adjacent to an existing urban area boundary and sensitively designed to ensure it is as well related, and integrated, to the neighbouring settlement as possible. Proposals that minimise the impacts on the countryside and, where relevant, Strategic Gaps will be preferred. Any proposal will also need to demonstrate that there will be no unacceptable environmental, amenity or traffic implications and that all other relevant Policies in the Local Plan have been duly considered."

- 5.21 This policy was found sound by the Local Plan Inspector in his May 2015 report on the LPP2 (**CDE.4**). The Inspector recommended that the policy was modified to include criteria for residential development to be considered against in the context of a HLS shortfall. The adopted policy was modified in line with the Inspector's recommendations. Policy DSP40 is consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year land supply cannot be demonstrated. The inherent flexibility in DSP40 ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 60 on '*significantly boosting the supply of homes*', whilst providing decision-makers with a framework to ensure that other considerations (including environmental considerations) – the importance of which are also recognised by national policy - are addressed.

**Local Plan Part 3: The Welborne Plan – Adopted June 2015
[CDE.6]**

- 5.22 The Welborne Plan (LPP3) is the third part of the Council's Local Plan and was adopted in June 2015. LPP3 is a site-specific plan which sets out how the new community of Welborne, to the north of the M27 Motorway at Fareham, should take shape over the period to 2036. Apart from considerations relating to Housing Land Supply, LPP3 is not relevant to the consideration of the appeal proposals.

Emerging Local Plan 2037

- 5.23 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 5.24 On 2nd October 2020 the Council approved a publication version of its emerging Local Plan under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and a six-week period of public consultation took place between 6th November and 18th December 2020. The emerging Local Plan was then revised in the light of changes to the Planning Practice Guidance. On 10th June 2021 the Council approved a revised version of the emerging Local Plan (**CDF.5**) for publication under Regulation 19. The consultation opened ran for six weeks from 18th June 2021 until 30th July 2021.
- 5.25 It is relevant to note at this stage that Natural England objected to the Revised Local Plan on the basis of the detrimental impact that new housing sites could have on the New Forest SPA/SAC/Ramsar. Their letter is at **CDH.14**.
- 5.26 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.
- 5.27 The Council's current Local Development Scheme (LDS) (**CDF.6**) was adopted in June 2021. The Council has met the timetable for submission for independent examination (Autumn 2021). Under the LDS, the emerging Local Plan is expected to be subject to independent examination in Winter/ Spring 2021/ 2022 (Regulation 24) and adopted in Autumn/ Winter 2022 (Regulation 26). I therefore consider that some weight can be attached to the emerging plan.
- 5.28 That part of the appeal 1 site beyond the 2020 consent is outside the emerging HA10 allocation and would be within the countryside, a proposed Area of Special Landscape Quality and a Strategic Gap in

the emerging Local Plan. Chapter 3 of the Plan sets out the Council's Development Strategy with all 3 policies [DS1, DS2 and DS3] being of direct relevance. These policies are also confirmed in the Plan to be strategic policies to address the priorities for the development and use of land in the Borough.

5.29 **Policy DS1 (Development in the Countryside)** is a countryside restraint policy setting out those circumstances in which new development will be permitted in the countryside. In addition, it sets out a number of requirements that acceptable development will have to demonstrate and these include:

- i) Require a location outside of the urban area, and*
- j) Conserve and enhance landscapes, sites of biodiversity or geological value and soils, and*
- k) Recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap, and*
- m) Are not on Best and Most Versatile agricultural land.*

5.30 **Policy DS2** relates to strategic gaps and the policies map and HA10 draft allocation indicate that the extent of the proposed strategic gap goes up to the extent of the 2020 consent area. Therefore, that part of Appeal 1 that is beyond the 2020 consent would be within the proposed strategic gap.

5.31 **Policy DS3** relates to Landscape with paragraph 3.50 referring to two recent housing appeal decisions, stating:

"Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions were on sites located in the Lower Meon Valley (Land west of Old Street, Stubbington APP/A1720/W/18/3200409 and Land east of Posbrook Lane, Titchfield APP/A1720/W/18/3199119) and the Inspectors recognised the high-quality landscape concluding that the Lower Meon is a valued landscape."

5.32 In this regard, the part of the Appeal 1 Site outside the HA10 boundary is proposed to be designated as an Area of Special Landscape Quality on the Policies Map. **Policy DS3 (Landscape)** states:

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

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

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

- 5.33 Chapter 4 deals with Housing Need and Supply with Table 4.1 indicating a Total Housing Requirement to 2037 of 9,556 dwellings. Table 4.2 sets out the supply, based current and proposed allocations along with outstanding permissions. These indicate a supply of 10,594, thus providing a contingency provision of 1,038 dwellings.
- 5.34 **Policy H1 (Housing Provision)** makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources including 55 new homes from part of the Appeal 1 site.
- 5.35 **Policy HP1 (New Residential Development)** states that residential development in locations outside of the Urban Area

boundary will be permitted where one of two factors (neither of which apply in this case) applies.

- 5.36 **Policy HP4 (Five-Year Housing Land Supply)** applies where the Council cannot demonstrate a five-year supply of land for housing and broadly mirrors the wording of LPP2 Policy DSP40.
- 5.37 **Policy HP5 (Provision for Affordable Housing)** states that, on greenfield sites that can accommodate 10 or more dwellings or with an area of 0.5ha or more, developers will be expected to provide 40% affordable units.
- 5.38 **Policy NE1 (Protection of Nature Conservation, Biodiversity and the Local Ecological Network)** states that development will be permitted where, among other things, designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations.
- 5.39 **Policy NE3 (Recreational Disturbance on the Solent Special Protection Areas (SPAs))** requires mitigation of recreational impacts of development on the Solent SPAs.
- 5.40 **Policy NE4 (Water Quality Effects on the Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites of the Solent)** states that planning permission will be granted where the integrity of the designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.
- 5.41 **Policy NE10 (Protection and Provision of Open Space)** requires residential development to provide open and play space to meet the needs of new residents. The emerging policies map allocates the part of the Appeal 1 site outside the HA10 allocation, and the Appeal 2 site as public open space.

5.42 **Policy TIN4 (Infrastructure Delivery)** requires provision of and contribution towards the delivery of new or improved infrastructure, or other mitigation, to mitigate the impacts of development.

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

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

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

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

5.45 **Policy D1** itself states:

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

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

- i. Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and*
- ii. Identity - where proposals create places that are attractive, memorable, distinctive and of strong character; and*

- iii. *Built form - where proposals create a three-dimensional pattern or arrangement and scale of development blocks, streets, buildings and open spaces, that are coherent, attractive and walkable; and*
- iv. *Movement - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity; and*
- v. *Nature - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure; and*
- vi. *Public spaces - where proposals create public spaces that are attractive, safe, accessible and provide a focus for social interaction, and promote healthy activity and well-being; and*
- vii. *Uses - where proposals provide or are well related and connected with, a mix of uses that provide the day to day needs of users; and*
- viii. *Homes and buildings - where proposals provide a variety of dwelling sizes and tenures, have sufficient space and are well related to public space; and*
- ix. *Resources - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste; and*
- x. *Lifespan - where proposals are designed and constructed to create enduring high-quality buildings, spaces and places that are attractive and functional, which weather well and can be adapted to users' needs with efficient management and maintenance."*

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

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

5.47 **Policy D2 (Ensuring Good Environmental Conditions)** states that development proposals will be permitted where they, among other things, do not, individually, or cumulatively, have an

unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land, or the wider environment.

- 5.48 Finally, **draft allocation HA10** allocates the developable area of land covered under the 2020 consent for housing with a clear indication, through criterion (a), that the quantum of housing proposed should be broadly consistent with the indicative site capacity of 55 dwellings. It also requires [criterion d] connectivity with the existing footpath/bridleway network in the vicinity of the site and eastwards towards the centre of Funtley village in order to maximise connectivity to nearby facilities and services. Criterion (f) sets out the need to consider 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.

National Planning Policy Framework (2021)

- 5.49 The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely plan-led (paragraph 15).

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

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

...

For decision-taking this means:

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

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

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

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

- 5.51 Footnote 7 states that the policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.
- 5.52 Footnote 8 states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 5.53 To support the Government's objective to significantly boost the supply of housing, Paragraph 59 of the NPPF states that it is important that a sufficient amount and variety of land can come forward where it is needed.
- 5.54 NPPF Paragraph 72 states:

'The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes). Working with the support of their communities, and with other authorities if appropriate, strategic policymaking authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way.' (emphasis added)

- 5.55 NPPF Paragraph 110 requires that new development ensures appropriate opportunities to promote sustainable transport modes can be provided. A safe and suitable access for users and any significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated to an acceptable degree.
- 5.56 National policy on design has been substantially strengthened in the revised Framework. Chapter 12 of the Framework. "*Achieving well-designed places*" has been significantly revised.
- 5.57 The overarching social objective of the planning system now has "*beautiful*" added to the previous requirement to provide "*a well-designed, [beautiful] and safe built environment*". There is no definition of "*beautiful*", which is necessarily context specific.
- 5.58 In respect of valued landscapes paragraph 174 of the Framework makes clear that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes [174a]. Paragraph 174 also requires decisions to recognise the intrinsic character and beauty of the countryside [174b].
- 5.59 Paragraph 174a also requires decisions to protect and enhance sites of biodiversity value and further provision is made on this issue in paragraphs 179 to 181. Paragraph 182 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Chartered Institute of Highways & Transportation - '*Providing for Journeys on Foot*'

5.60 The established advice for walking is contained within the document 'Providing for Journeys on Foot' published by the CIHT in 2000 [CDH.27] and 2015 [CDH.29].

5.61 Table 3.2 of CIHT2000 sets out the acceptable walking distances. The guidelines in Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

5.62 While it may be suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern is not borne out by the information contained within Table NTS0303 contained within NTS20185. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km)². Those national survey results suggest that individuals' attitudes towards walking trip lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000. This view was affirmed by Inspector Jenkins in the Newgate Lane North/South appeal decisions [CDJ.4] when he states at paragraph 62:

"To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on

² It should be noted that for 2020 whilst the average number of walking trips decreased the number of trips over a mile increased by some 34% compared to 2019, thus giving an average walk length of 0.8 miles, compared to 0.7 for the period 2002 to 2019. I consider this likely to be a result of COVID-19 when many short local trips to business and schools were limited but people found a renewed interest in longer walks in the countryside. I have therefore used the figures from the 2019 NTS as I consider those to be more representative.

acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.”

5.63 In any event, were the guidelines stated in CIHT2000 thought to be out of date, then one would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its ‘Planning for Walking’ guidance in 2015 appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency.

5.64 In CIHT 2015 it is noted at 4.1 that where walking conditions are less than ideal, pedestrians face challenges caused by a combination of factors including: poor provision or maintenance of footways and lack of street lighting. As reported in CIHT 2000 such factors are a deterrent to walking.

5.65 The table on page 26 of CIHT 2015 sets out in detail the “5Cs of Good Walking Networks which are summarised as being:

- 1 connected
- 2 convivial
- 3 conspicuous
- 4 comfortable
- 5 convenient

5.66 Paragraph 6.3 of CIHT 2015 it is made clear that even when a walking network complies with the 5Cs then:

"Most people will only walk if their destination is less than a mile away. Land use patterns most conducive to walking are thus mixed in use and resemble patchworks of "walkable neighbourhoods," with a typical catchment of around 800m or 10 mins walk."

6. PROPER APPROACH TO DETERMINING THESE APPEALS

Habitats Legislation

- 6.1 The Inspector is the competent authority under the Habitats Regulations for the purposes of these Appeals. If otherwise minded to grant permission, the Inspector is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to conduct an appropriate assessment of all likely significant effects (i.e. those effects that cannot be excluded beyond a reasonable scientific doubt). It is common ground that there are likely significant effects from Appeal 1 but not Appeal 2 (see the Habitats Statement of Common Ground [**CDD.3**]).
- 6.2 The requirements for appropriate assessment are summarised in **R (Mynydd y Gwynt Ltd) v Business Secretary** [2018] P.T.S.R. 1274 [**CDK.9**] and **R (An Taisce) v SSECC** [2015] Env. L.R. 2 [**CDK.14**]. For the appropriate assessment to be “passed” the Inspector must be certain beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Site in perpetuity. If the Inspector is not certain beyond a reasonable scientific doubt that the Appeal 1 scheme will not (alone or in combination with other plans or projects) adversely affect the integrity of a European Site, permission has to be refused unless the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the Appellants do not suggest. A planning balance therefore only needs to be conducted if the Inspector is able to exclude any adverse effects on integrity beyond a reasonable scientific doubt.
- 6.3 At the time of writing, the parties are agreed that habitats impacts are capable of resolution through mitigation being secured by planning obligations (see the Habitats Statement of Common Ground [**CDD.3**]), but the section 106 has not yet been finalised. I explore these matters further in section 8 below.

The Section 38(6) test

- 6.4 As noted above, by Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the PCPA, these Appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point in determining the Appeals is, therefore, to consider the extent to which the Appeal Developments accord with or conflict with the adopted development plan policies and the development plan as a whole. The decision maker must then turn to other material considerations.

Relevant case law on the Section 38(6) test and the tilted balance

- 6.5 The NPPF is an important material consideration under the section 38(6) test but, as Lord Carnwath made clear in the Supreme Court judgment in **Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council** [2017] UKSC 37 (“the Suffolk Coastal case”) [CDK.4] at [21], the NPPF “cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme”. This is reiterated in NPPF Paragraph 12: “The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making”. The statutory priority of the development plan was also recognised by the Court of Appeal in **Gladman Developments Ltd v SSHCLG** [2021] EWCA Civ 104 [CDK.18], a case which also addressed the interplay between the section 38(6) test and the tilted balance under paragraph 11(d)(ii) of the NPPF, making clear among other things that a decision-taker may have regard to development plan policies when applying the tilted balance.

Housing Land Supply

- 6.6 The approach to considering the extent of the housing land supply shortfall is considered in **Hallam Land Management Ltd v SSCLG** [2018] EWCA Civ 1808 (**CDK.8**) at paragraphs 51 and 52. In this case, as set out in section 7 below, the Council accepts that it is not currently able to demonstrate a 5YHLS (it's position is that it can demonstrate a 4.31 year supply). As a result, the presumption in favour of sustainable development under paragraph 11(d) of the NPPF is engaged unless disapplied on habitats grounds by virtue of paragraph 182.

Weight to be Given to Adopted Development Plan Policies

Introduction

- 6.7 The weight to be afforded to LPP1 and LPP2 policies has been considered in a number of recent appeal decisions. I address the most recent decisions below as these seem to me to be the most relevant. I then offer my conclusions.

Recent Appeal Decisions

- 6.8 In the case of the *Land West of Old Street, Stubbington (CDJ.3)*, [January 2019] as with other recent appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial.
- 6.9 At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and

separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

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

- 6.10 In the next appeal on *Land East of Posbrook Lane, Titchfield (CDJ.2)*, for 150 dwellings [April 2019] Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. Inspector Stone also determined that because of the lack of a 5YHLS policies to protect the countryside such as CS14, 22 and DSP6 did not have full weight rather they had significant weight. In respect of Policy DSP40, however, he concluded at Paragraph 68 that:

"...The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight... These are two significant policies [DSP5 and DSP40] where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole."

6.11 This site was within the Meon Valley and at paragraph 32 Inspector Downes had *"no doubt that the Lower Meon Valley is a valued landscape"*. In this regard she concludes at paragraph 38:

"The appeal site is an integral part of the Meon Valley landscape character area and in particular the lower section south of Titchfield. This landscape is valued for its quality, even though there is no designation in the current development plan. The proposed development would be unacceptably harmful to the character of the Lower Meon Valley and would fail to protect this valued landscape. The proposal would therefore conflict with policies CS14 in LPP1 and policy DSP6 in LPP2 and be contrary to Framework policy relating to the countryside and landscape."

6.12 At paragraph 39 she acknowledges that due to the housing land supply situation in Fareham the conflict with those policies has reduced weight and policy DSP40 is engaged.

6.13 In the final paragraph of the decision letter Inspector Downes concludes the Planning Balance and states:

"Notwithstanding the substantial benefits that would flow from the proposed development there would also be very substantial harms. In this case the conflict with the development plan and the environmental harm that would ensue to the countryside within the valued landscape of the Lower Meon Valley is of compelling importance and outweighs the many advantages of the scheme. I have considered all other matters raised but have found nothing to change my conclusion that this would not be a sustainable form of development and that the appeal should not succeed."

6.14 In the *Land East of Downend Road, Portchester* appeal decision [CDJ.1] there was a difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). In this decision letter, dated 5th November 2019, at paragraph 90, Inspector Gould erred on the side of caution and considered the Appellant's housing figures to better represent the then current situation. However, notwithstanding this fact, he concluded at paragraph 97 that:

"I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified."

6.15 In the case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham (CDJ.4)* as with other recent appeals, Inspector Jenkins did not see a need to determine the precise extent of the shortfall but considered it to be substantial.

6.16 Inspector Jenkins found at paragraph 15 that, in the absence of a five year supply, the weight to be afforded to Policies CS14, CS22 and DSP6 was reduced because of their restrictive effect, and would be outweighed by compliance with Policy DSP40.

6.17 In paragraphs 55 to 77 Inspector Jenkins considered whether the site was sustainably located, with reference to accessibility. The Inspector considered Guidance in various documents, including *Manual for Streets [CDH.25]*; the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*; The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000) (PfJoF) [CDH.27]*. CIHT *Planning for Walking, April 2015 [CDH.29]*; and the *National Travel Survey, 2020 (NTS) [CDH.28]*; along with the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018 [CDG.6]*.

6.18 At paragraph 63 Inspector Jenkins observed that that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In his view:

"it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional planner or engineer to decide if a lower standard is acceptable in given circumstances."

6.19 At 77 Inspector Jenkins concluded on the issue of sustainability:

"I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework."

6.20 Under the heading 'Planning Balance', at paragraph 104, Inspector Jenkins found that:

104LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements.

6.21 Inspector Jenkins went on to give "little weight" to the identified conflicts with policies CS14, CS22 and DSP6 (Paragraph 106).

6.22 The matter of weight to be given to Policy DSP40 was considered in his [Inspector Jenkin's] Planning Balance section of the Newgate Lane (north) appeal at paragraphs 108 to 112 of his decision letter and due to their relevance, I repeat them in full below:

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

109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).
111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.

6.23 In the recent case of *Land at Newgate Lane (East)*, June 2021 (**CDJ.6**), the Inspector used the LPA's figure of 3.57 years as a benchmark to assist in making his decision (paragraph 45).

6.24 At paragraph 13 Inspector Jones notes that it was common ground

between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:

ii Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;

iii Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and

v. Would not have any unacceptable environmental ... implications.

6.25 At paragraph 16 Inspector Jones refers to the Peel Common decision [Newgate Lane (North) and (South)] in respect of the weight to be attributed to certain policies, stating:

"I agree with his conclusion that LP1 Policies CS2 and CS6 are out-of-date in the terms of the Framework and that against this background, the weight attributable to conflicts with Policies CS14 and CS22 of the LP1 and LP2 Policy DSP6 is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements."

6.26 In paragraph 28 of the decision letter Inspector Jones expands upon the interpretation of "minimise" in the context of criterion (iii) set out in the Peel Common decision letter, stating:

In summary, he explained that the aim of Policy DSP40 is to facilitate housing in the countryside relative in scale to the five-year housing land supply shortfall, and went on to say that any new housing in the countryside would be likely to register some adverse landscape and visual effect such that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as location, scale, disposition and landscape treatment. I broadly agree with his approach because otherwise the Policy would be likely to become self-defeating in terms of failing to reasonably respond to a housing delivery shortfall which it is, in part, designed to address.

I agree that policy DSP40 does not require adverse landscape and visual impacts to be *entirely* avoided. What is required by DSP40(iii) is that such impacts are minimised and reduced to levels that would

not constitute unacceptable implications (to draw on the wording of criterion v). What is unacceptable will depend on the context, including whether the landscape is a valued landscape, where (all other things being equal) adverse landscape and visual effects are more likely to be unacceptable and in breach of DSP40. It is material to note that the Peel Common site was not within a valued landscape.

- 6.27 Finally, in the planning balance the Inspector sets out at paragraphs 45 and 46 the weight he attaches to various policies:

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

46. Although the weight attributable to the wider conflicts with LP1 Policies CS14 and CS22 is reduced, there would nonetheless be harm caused to the character and appearance of the area, including in terms of the Strategic Gap. LP2 Policy DSP40 criteria (ii) and (iii), however, carry greater weight, albeit that the evidence indicates that the balance they strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the housing supply shortfall has persisted for a number of years in spite of this Policy. For the purposes of making my decision I have treated LP1 Policy CS17 as carrying full weight."

- 6.28 The most recent DSP40 appeal decision letter is dated 10th January 2021 [**FBC.27**] concerning land East of Crofton Cemetery, Stubbington and I have set out a number of relevant paragraphs from that decision below.

- 6.29 At paragraph 6 Inspector Jordan noted that it was common ground that at the time the 5YHLS figure was between 3.17 and 3.57 years

of supply, and considered it unnecessary to determine the precise figure.

- 6.30 Paragraphs 8 to 12 deal with the policy background and in respect of the relationship of DSP40 to other policies, Inspector Jordan comments at 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..."

- 6.31 In respect of CS17 (High Quality Design) Inspector Jordan considered the policy was consistent with the NPPF with good design being a key aspect of sustainable development.
- 6.32 At paragraph 24 Inspector Jordan did not consider it necessary for the development to "feather the edge" of the settlement. However, in my view the context of that site is very different to this current appeal in which the development edge lies within a valued landscape.
- 6.33 At paragraph 28 Inspector Jordan refers to the detailed discussion at the inquiry on softening the edge of the development with her commenting that the landscaping was intended to frame the development, not screen it. She considered this to be an appropriate approach in an edge of settlement location and I concur with that view, as did the Council in that appeal, when the site is not within a valued landscape. The issue in dispute was whether the landscape would soften the development to an appropriate extent.
- 6.34 At paragraph 29 Inspector Jordan sets out her view on whether the site would be 'well-related' and looks at this matter in terms of sustainable travel. In my professional judgement, I respectfully consider that she has confused 'well related' with 'well-integrated' and 'sustainably located' within DSP40(ii). 'Well-related' should be

considered from a landscape perspective. This is made clear in paragraph 26 of Inspector Jones' decision on Newgate Lane East [CDJ.6]:

"However, I also see no reason why criterion (ii) should not also be considered from a landscape and visual perspective. Consequently, for the landscape and visual impact assessment reasons outlined above, particularly given the extent to which it would project from the existing settlement boundary out into the countryside, the proposed development could not be said to be well related to the existing settlement boundary and well integrated with the neighbouring settlement in the terms of Policy DSP40 (ii)."

6.35 In the planning balance Inspector Jordan concludes at paragraph 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."

6.36 Finally, in paragraph 84 Inspector Jordan, drawing on the supporting text to policy DSP40, confirms that a condition should be imposed requiring a commencement period of 18 months to reflect DSP40(iv).

Conclusions on the weight to be afforded to Policy DSP40

6.37 A breach of policy DSP40 puts a development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led.

6.38 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental

constraints of settlement boundary policy. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF paragraph 60 on 'significantly boosting the supply of homes' and with the NPPF as a whole. Policy DSP40 is wholly consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year housing land supply cannot be demonstrated.

- 6.39 Having regard to the findings of the Inspectors in the above appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 8 of the NPPF, it can be afforded, at the very least, very substantial weight in the planning balance and conflict with it should therefore be a matter of the greatest consideration.

Conclusions on the weight to be afforded to Other Policies

- 6.40 As a result of the absence of a five year housing land supply, I accept that policies CS2, CS6 and DSP6 are out of date and that the weight to be attributable to conflicts with policies CS14 and CS22 is reduced, but only to the extent they derive from settlement boundaries that reflect out of date housing requirements. I give those policies, or parts thereof, which specifically relate to the provision or location of new housing limited weight due to the housing supply shortfall. However, policies CS14 and DSP6 both contain criteria which to seek to control development which would adversely affect landscape character and appearance. Since the Appeal Sites are within what the Council consider is a valued landscape, the landscape protection elements of those policies are consistent with the NPPF and, in line with the Posbrook Lane decision (**CDJ.2**) (Paragraph 67) should in my view attract significant weight, rather than the limited weight attributed in the Newgate Lane North and South decision (**CDJ.4**) (Paragraph 106) and Newgate Lane East decision (**CDJ.6**) (Paragraph 45), where the landscape was not considered to be 'valued'.

- 6.41 The remainder of the relevant policies are in my view consistent with the NPPF and should attract full weight.

Weight to be Given to Emerging Local Plan Policies

- 6.42 I consider that some weight can be attached to the emerging Fareham Local Plan 2037 and its policies, with the amount of weight being governed by the tests under paragraph 48 of the NPPF.

How should NPPF Paragraph 11(d) be applied?

- 6.43 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74 [**CDK.10**].
- 6.44 The Appeal 1 proposal does not, in my view, accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.
- 6.45 NPPF Footnote 8 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 6.46 NPPF 11(d), which I set out in section 5 above, provides two tests. It is the correct approach (see *Monkhill*) to apply these tests sequentially, the first test being whether there are policies within the Framework which provide a clear reason for refusing the Appeal Development.
- 6.47 I consider that there are policies of this type in the Framework, as referenced at footnote 7 of paragraph 11(d) ('habitats sites'). In respect of 'habitats sites' it has not yet been established that there would be no adverse effects on the integrity of any European Sites (see section 8 of my Proof), though this issue is likely to be resolved

on finalising and executing a section 106.

6.48 As I have explained, if the habitats issues are not resolved, there is likely to be a statutory bar to the Appeal 1 scheme. If, on the other hand, the Inspector concludes (following an appropriate assessment) that the Appeal 1 proposal will not adversely affect the integrity of habitats sites, the tilted balance will be engaged given the Council's inability to demonstrate a 5YHLS.

6.49 On application of the tilted balance, I consider that the adverse impacts significantly and demonstrably outweigh the benefits, as I explain in section 10 below.

7. HOUSING LAND SUPPLY

Introduction

7.1 As discussed in the CMC the Council published its new five year housing supply figures on 11th January 2022. This is appended at **FBC.28**.

7.2 The Council and the Appellants have agreed to cooperate on the production of a housing land supply Statement of Common Ground. Whilst at the time of writing my proof there is currently no SOCG on 5YHLS I consider the following matters to be uncontentious:

- Based on the information available to me the five-year period to be used for the purpose of calculating the five-year housing land supply position for this Appeal is 1st January 2022 to 31st December 2026.
- The housing requirement falls to be measured against the local housing need figure calculated using the standard method.
- The starting point derived from the standard method equates to 2,705 dwellings over the five-year period (or 541 dwellings per annum) but that this requires a 20% uplift, giving a five year requirement of 3,246 dwellings.
- The Council is unable to demonstrate a five-year supply of housing for the period 1st January 2022 to 31st December 2026. The Council considers the 5YHLS position to be 4.31 years.
- Whilst there may be a disagreement on the extent of the shortfall, on the Council's position I accept that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant; and as such (on **Hallam** principles) I do not consider it necessary for the Inspector to conclude on the precise extent of the shortfall. Such an approach has been adopted on the previous DSP40 appeal cases that I have set out earlier in my proof.

7.3 On this basis, I consider it may not be necessary for either party to call their respective witnesses to deal with housing land supply

matters. However, due to the current uncertainty on this matter, I have set out in detail below the evidence to support the Council's position that it is correct in asserting that the current 5yr supply is 4.31 years.

The Five-Year Housing Requirement

- 7.4 Planning Practice Guidance (PPG) advice in respect of housing and economic needs assessment states that there is no requirement to specifically address under-delivery separately when determining what the housing requirement should be as the affordability adjustment is applied to take account of this. The only instance where past under-delivery is required to be taken into account is where an alternative approach to the standard method is used (Paragraph:011 Reference ID: 2a-01120190220).
- 7.5 The projected annual household growth should be based on 10 consecutive years, with the current year being used as the starting point from which to calculate growth over that period (PPG Paragraph 004 Reference ID: 2a-004-202001216).
- 7.6 The updated housing requirement for the period 1st January 2022 - 31st December 2026 was 2,705 dwellings, based on a requirement of 541dpa.
- 7.7 As a result of the Housing Delivery Test results published in February 2021, I agree that it is appropriate to apply a 20% buffer to the requirement, giving a five year requirement of 3,246 dwellings for the period 1st January 2022 to 31st December 2026.

Five-Year Deliverable Housing Supply: Key Principles

- 7.8 In order to be considered deliverable (see page 66 of the NPPF) all sites must as a minimum have offered a suitable location for development at the base-date; they must have been available at the base date; and there must have been a realistic prospect of delivery within five-years from the base date of the assessment – this being 1st January 2022.

- 7.9 Additionally, permitted sites which do not involve major development and sites with detailed planning permission should be considered as deliverable sites unless there is clear evidence that new dwellings will not be delivered within five years.
- 7.10 Sites with outline planning permission for major development, sites allocated within the development plan, sites with the grant of planning permission in principle and sites identified on a brownfield register can only be considered deliverable where there is clear evidence that completions will begin on site within five years.

Fareham's Housing Delivery Test Action Plan

- 7.11 The Housing Delivery Test: 2020 measurement was published on the 19th January 2021 and confirmed that the Council had achieved 79% of the housing required for the Borough for the three years from 2017-2020. As such the Council has been required to produce an Action Plan in accordance with paragraph 75 of the NPPF and national planning guidance. One of the purposes of such Action Plans is to identify the measures already undertaken and those proposed to be undertaken in order to boost the delivery of new housing within Boroughs. The Fareham Borough Council Housing Delivery Test Action Plan was produced in May 2021 (**CDH.10**) and approved for publication in June 2021. It identifies the following measures that have been, or will be, adopted in order to boost the delivery of housing:
- Local Plan - priority will be given to the examination and subsequent adoption of the Local Plan.
 - Welborne Garden Village is regarded as an essential part of the Council's ongoing housing delivery programme.
 - Nitrate mitigation sites have been identified and are ensuring that residential sites subject to a resolution to grant planning consent are being approved
 - Nitrate neutrality – lobbying of Government.
 - Development management – in the form of releasing appropriate greenfield sites for development, working with developers in order to bring forward sites through the use of Planning Performance

Agreements and, through the use of conditions, by requiring the implementation of consents within a relatively short time period.

- Developer engagement – to include regular updates of the Brownfield Register and regular call for sites.
- Affordable housing programme – the adoption of a new Affordable Housing Strategy and through identification of land owned by the Council.
- Fareham Town Centre Regeneration – the draft Local Plan focusses on the search for additional housing sites in sustainable locations in the Fareham Town Centre.

7.12 In the time since June 2021 when the Action Plan was approved there has been significant progress in several areas. As already set out, the Council submitted the Fareham Local Plan 2037 for examination on 30th September 2021. This is in line with the Council's Local Development Scheme (LDS) which gives submission as being during Autumn 2021, Examination during Winter/Spring 2021/2022 and adoption in Autumn 2022. Furthermore, outline planning permission was granted for Welborne Garden Village, a new 6,000 home community north of Fareham, on the same day, 30th September 2021. With regards to the issue of nutrient neutrality, as stated in paragraphs 5.7 – 5.12 of the Action Plan the Council has agreements in place to enable several nutrient mitigation schemes to be available for development schemes in the Borough. At the time of preparing this Proof four such schemes are now in place delivering mitigation solutions for developers.

7.13 As a result of these positive actions, it is clear that the supply of housing has increased and that some delivery constraints have been overcome. As such, the Council considers that its housing land supply position has since considerably improved and is confident that, going forward, ongoing plan-led delivery will further improve the extent that the Council will be able to demonstrate a five-year housing supply position.

Overview of the Council's Position on the Deliverable Housing Supply

7.14 As set out in 7.1 above, the most recent and publicly available five-year housing land supply position update was produced by the Council on 11th January 2022 (**FBC.28**) and gave a projected position of 4.31 years supply. The calculation is as follows

Fareham Borough – current Housing Land Supply Position

A	Local Housing Need: Dwellings per annum	541
B	Local Housing Need: Total requirement for 1 st January 2022 to 31st December 2026 (A x 5)	2,705
C	20% buffer - delivery of housing over the previous 3 years, has fallen below 85% of the requirement, as set out in the 2020 Housing Delivery Test results (B x 20%)	541
D	Total housing requirement for period from 1st January 2022 to 31st December 2026 (B+C)	3,246
E	Annual requirement for period from 1st January 2022 to 31st December 2026 (D/5)	649
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 31st December 2026 (discounted by 10% for lapses)	54
G	Net outstanding full planning permissions for large sites (5 or more units) expected to be built by 31st December 2026	599
H	Net outstanding outline planning permissions for large sites (5 or more units) expected to be built by 31st December 2026	1373
I	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 31st December 2026	445
J	Dwellings allocated in Adopted Local Plan that are expected to be built by 31st December 2026	35
K	Dwellings from brownfield register sites that are expected to be built by 31st December 2026	192
L	Small site windfall allowance (years 4 – 5) (51 dwellings x 2 years)	102

M	Expected housing supply for the period from 1st January 2022 to 31st December 2026 (F+G+H+I+J+K+L)	2,800
N	Housing Land Supply Position over period from 1st January 2022 to 31st December 2026 (M – D)	-447
O	Housing Supply in Years (M / E)	4.31

Nitrate mitigation

- 7.15 The issue of nitrate mitigation has previously constrained the ability of the Council to grant planning permission for new dwellings. However, this obstacle has now been resolved and the Council are currently issuing consents upon completion of appropriate legal agreements. Furthermore, it is clear that, moving forward, this issue should not arise again for the foreseeable future.
- 7.16 Nitrate mitigation problems date back to February 2019, when European case law led Natural England to issue advice to relevant local planning authorities recommending that an Appropriate Assessment be undertaken for schemes that result in a net increase of one new dwelling where there is a likely significant impact on European Protected Sites (EPS). The rationale for this premise is that overnight accommodation (to include dwellings) generates nitrates in wastewater that will be discharged into the Solent and thereby harm EPS's.
- 7.17 Residential applications are therefore required to demonstrate nitrate mitigation. This has proved to be difficult for some sites, not just within Fareham, but also in numerous adjoining and neighbouring local authorities. Agricultural uses also generate nitrates (through the use, for example of nitrate fertilizer, or through the rearing of livestock) and thus the typical means of mitigation is through the removal of land from agricultural production. This can be carried out through the planting of woodland or creation of wetland habitats – the 'rewilding' of these agriculture sites create 'mitigation sites'.

7.18 This solution is space hungry, and typical development sites are simply too small to be able provide adequate space to mitigate their nitrate loads. This has meant that for a period of time, the majority of applications in the system since February 2019 have been unable to demonstrate nitrate neutrality. Until this issue had been resolved such applications were left undetermined. As set out in paragraph 4.12 of the Housing Delivery Test Action Plan (**CDH.10**) at one point in 2020 some 1,400 dwellings could not be progressed pending resolution of this issue.

7.19 However, since September 2020 various mitigation sites have come forward to unlock application sites. The process is therefore one where applicants, during the application process, can make contact with a mitigation site operator. Credits are then purchased on the basis of an agreed nitrate load thereby requiring that the site operator will implement the terms of the overarching contract entered into with the Council – namely to remove relevant land from agricultural use and provide it as, for example, woodland or wetland habitats.

Mitigation Sites

7.20 There are currently four mitigation sites that applicants can access, as follows:

- Little Duxmore Farm, Rowlands Lane, Havenstreet, Isle of Wight
- Heaton’s Farm, Colemans Lane, Porchfield, Isle of Wight
- Warnford Park
- Whitewool Farm.

7.21 Paragraph 5.10 of the Housing Delivery Test Action Plan identifies that agreements are in place with private operators to deliver 4,000 credits, which is sufficient for some 5,000 dwellings. Paragraph 5.12 states that there is an ongoing need to identify and secure future mitigation sites to help secure medium and long term housing supply.

- 7.22 All four mitigation sites are located in adjoining local authorities which therefore means that residential schemes from other local authority areas can purchase credits to mitigate their own nitrate load. In addition, it is understood that Little Duxmore Farm is at, or nearing, capacity and will soon be unable to make a significant contribution to nitrate mitigation.
- 7.23 Discussions have been held between the LPA and the agent acting for the Warnford Park mitigation site, who has confirmed the following:
- There are currently available some 2,800kgs of nitrates that can be used to mitigate residential schemes. This is evidenced at Appendix 5 of the Appellants' submission regarding the purchase of nitrate credits at this particular mitigation site [CDAA.5] which shows that the mitigation land as a whole provides for 3,027 kg/N credits with only 197 kg/N having been allocated thus far all to development sites within Fareham Borough.
 - The operators have entered into an overarching agreement with Fareham Borough Council in order to mitigate relevant residential schemes. However, no other meaningful discussions have been held with other, adjoining or neighbouring local authorities. Thus, at the present time only sites within the Borough can mitigate nitrate load at Warnford Park.
- 7.24 In addition, it has been confirmed by the Council that Heaton's Farm, Colemans Lane currently has some 486 kg of nitrates available for mitigation. However, it is understood that currently one other local authority, other than Fareham Borough Council, has access to this mitigation site.
- 7.25 Finally, there is a new site that is now available at Whitewool Farm where the landowners entered into a legal agreement with Fareham Borough Council on 3rd November 2021. The landowners are to bring forward agricultural land and a wetland scheme at the farm which is located in the South Downs National Park. The scheme proposes the

creation of wetland and removal of land from agricultural use to deliver a reduction of around 2,000 kg/N/yr.

7.26 Thus, it is clear that access to nitrate mitigation schemes with plentiful capacity at Warnford Park, Colemans Lane and Whitewool Farm are available to residential schemes within Fareham in the short to medium term helping to secure a sufficient and sustainable level of local housing supply.

7.27 This is in addition to access that applicants may have to other sites that may come forward in the future.

7.28 The ability of individual sites to mitigate their nitrate load will vary. However, it is common for some sites to be able to demonstrate nitrate neutrality and therefore not be required to access the mitigation sites mentioned above. WGV, for example is to be nitrate neutral and is expected to deliver 390 dwellings over the next five years.

7.29 The Habitats Regulations Assessment for the emerging Local Plan estimates (in para 6.6.16) (**CDF.7**) that the total nitrogen budget for the Plan is 2,182.62 kg/TN/year. This calculation, as set out in Appendix III of this document, is based on an assessment of the nitrate load of both allocated sites and windfall sites. The Appendix also sets out the assumptions made in this assessment and so will vary. However, identified mitigation sites should have sufficient capacity to cater for demands within the Borough for a considerable period of time and well beyond the next five years.

Nitrate Summary

7.30 It is clear that the Council has played a demonstrably positive and proactive role in securing nitrate mitigation. This has already had a significant and positive impact on the supply of housing enabling the Council to grant planning permission on sites that were otherwise unable to mitigate nitrate load before.

7.31 It is, therefore, clear that previous issues that the Council have had with regard to issuing consents have now been resolved and that a number of permissions have been granted thus enabling these sites to come forward. Furthermore, adequate nitrate mitigation can be provided for the foreseeable future ensuring that a sufficient level of housing supply can be maintained.

Projected Housing Land Supply within the context of the Emerging Local Plan

7.32 The Council has clearly made good progress in addressing ongoing housing land supply issues. Further work is still required and the Council acknowledge that it cannot yet demonstrate a five-year housing land supply position, but are confident that they will be able to do so in the near future in light of the emerging Local Plan and WGV progress.

7.33 The Council has published its Local Development Scheme (June 2021) (**CDF.6**), which sets out the timetable to adoption of the emerging Local Plan, as per the following:

- Consultation on revised publication local plan (Reg. 19) – Spring/Summer 2021
- Submission to the Secretary of State – Autumn 2021
- Examination – Winter/Spring 2021/2022
- Adoption – Autumn/Winter 2022

7.34 The Council submitted the Plan for independent examination on 30th September 2021 in accordance with this timetable. The Council is of the opinion that the remainder of the timetable for the adoption of the Emerging Local Plan is a realistic one. PINS maintain a list of recent local plans by reference to submission and adoption dates. Whilst a number of local plans submitted since 2019 have yet to be adopted there have been a number that have been adopted between 10 months and 1 year 9 months, as per the following table:

**Review of timescales of recently adopted local plans
(submission to adoption)**

Local Council	Submitted	Adopted	Timescale
Chesterfield BC	28/06/2019	15/07/2020	1 yr 1 month
Durham CC	28/06/2019	21/10/2020	1 yr 4 months
Hackney	23/01/2019	22/07/2020	1 yr 6 months
London Legacy DC	08/03/2019	21/07/2020	1 yr 4 months
North York Moors NPA	02/07/2019	27/07/2020	1 yr
Northumberland NPA	30/09/2019	15/07/2020	10 months
Oxford CC (2016-36)	22/03/2019	08/06/2020	1 yr 3 months
South Kesteven DC	14/01/2019	30/01/2020	1 yr
South Oxfordshire DC	29/03/2019	10/12/2020	1 yr 9 months
Suffolk Coastal DC	29/03/2019	23/09/2020	1 yr 6 months
Average			1yr 3 months

7.35 In order to be considered sound, Local Plans should be deliverable as well as ambitious. There is also a requirement that the Local Plan should establish a five-year housing land supply upon adoption. In this regard and taking into account the requirement for a 20% buffer on five-year housing land supply, the specific figures of the stepped housing target proposed are necessary in order to both achieve a five year housing land supply on adoption of the Local Plan that is realistic and can be sustained going forward. It is important to note that the stepped housing requirement is not expressed as a maximum figure and therefore allows for more dwellings than the target to be delivered per annum. The total requirement and the stepped targets reflect what can be delivered as evidenced in the SHELAA. The trajectory has been informed by regular engagement with developers and landowners and is considered to be reasonable and realistic.

7.36 It is correct that this means the minimum housing need of 2,705 homes will be exceeded. However, the Local Plan is required to secure a 5YHLS on adoption and the unmet need contribution and 20% buffer need to be applied. Once you factor in these requirements, the total

requirement would actually be 3,588, hence the proposal for the stepped requirement.

Overall conclusion on 5-year housing land supply

- 7.37 For the reasons set out above, although the Council accepts that it is currently unable to demonstrate a 5-year housing land supply and that the shortfall is significant, I consider that the 4.31 year housing land supply published by the Council is appropriate and that the housing land supply should continue to improve in the future through plan-led delivery.

Affordable Housing

Need

- 7.38 It is common ground that there is a significant unmet affordable need within the Borough (main SoCG Table 5 line 9). In this section I consider the extent of that need.
- 7.39 The Council's latest document setting out the need for affordable housing in the Borough is 'Fareham's Affordable Housing Strategy 2019-2036' (Core document **CDH.31**, page 11). It identifies a need for around 3,500 affordable homes in the Borough over the period 2019-2036, equivalent to 206 affordable homes per annum (to include an allowance of 500 for new households and those falling into need).
- 7.40 On this basis, the shortfall in the delivery of affordable housing between 2011/12- 2018-19 is as set out in the following table:

Period	Cumulative delivery (dpa) *	Shortfall (dwelling units)	
2011/12	206	127	-79
2012/13	412	218	-194
2013/14	618	276	-342
2014/15	824	413	-411
2015/16	1,030	440	-590
2016/17	1,236	525	-711
2017/18	1,442	566	-885
2018/19	1,648	610	-1,038

(* figures based on MHCLG live tables records)

7.41 For the eight-year period between 2011/12 - 2018/19 the overall affordable housing need was 1,648 dwellings (i.e. 8 x 206dpa). Over this period some 610 dwellings were delivered and thus there is a shortfall of 1,038 dwellings (based on MHCLG live tables).

7.42 There is no evidence that the shortfall in supply of affordable dwellings has resulted in an increase in affordable housing need within the Borough. The number of households on the Council's waiting list for social and affordable rented housing has not increased in the last few years, but has remained generally constant at around 1,000-1,100 households as per the following table:

Year	No. on waiting list
June 2018	995
Aug 2019	1,100
Jan 2020	1,082
Jan 2021	1,125

7.43 Current indications from Help to Buy South are that the numbers registered for intermediate affordable homes have decreased significantly since 2018/19.

Future Affordable Housing Supply

7.44 The Council has appointed a dedicated post in 2018 to take a strategic lead on progressing affordable housing opportunities within the Borough. Since that date the Council has pushed forward with the delivery of new affordable housing. Typically, projects start on site within 12 months of a full planning consent and thus delivery is expected within five years.

7.45 Since the adoption of the Affordable Housing Strategy in 2019 the following affordable housing sites have either been completed or are anticipated to be progressed during 2021/22:

Site and proposal	Application no.	Consent date	Commentary
Former Merjen Engineering, Station Road, Portchester 16 no, Sheltered flats	P/19/0840/FP	17/04/2020	Contractors have been appointed and are due to shortly start on site
Former Hampshire Rose, 18 flats	P/17/0956/FP	25/05/2018	6 flats completed and occupied. Practical completion due May 2021
Land at Stubbington Lane, 11 houses	P/19/0915/FP	15/04/2020	Contractors have been appointed and are due to shortly start on site
123 Bridge Road, Sarisbury Green, 5 houses	P/15/0391/FP	26/05/2015	Completed
Former Scout Hut, Montefiore Drive, 9 flats	P/20/0702/FP	23/11/2020	Architects appointed to undertake the technical design stage and contractor expected to be appointed in 2021
28 Queens Road, Fareham, 2 dwellings	P/20/1513/D3	10/02/2021	Architects shortly to be appointed to undertake the technical design stage and contractor expected to be appointed in 2021

7.46 The projects outlined in the Table above alone comprise 61 affordable dwellings that are anticipated to be completed by the end of 2022.

7.47 It is also anticipated that, in future years, progress will be made with regard to the following sites as shown in the Table below:

Site	Commentary
Assheton Court Portchester - Redevelopment of 33 sheltered flats and redevelopment to provide c60 dwellings (net increase of c27 dwellings)	Detailed plans being prepared
15 Crossfell Walk, Fareham (P/21/0361/FP) - Demolition of 2 flats and redevelopment to provide 1 house	Application being considered
Menin House - Redevelopment of 24 dwellings to provide c30-50 dwellings	Awaiting Council Executive approval
Wynton Way. 10 dwellings	Local plan allocation delivery anticipated with five years.

7.48 The projects as outlined above are part of an ongoing programme seeking to deliver affordable housing within the Borough. The Council is working with Local Registered Providers who are able to boost the supply of affordable housing. Thus, some schemes are able to be provided as up to 100% affordable housing. Examples of where this

is in the process of occurring are North Funtley (P/17/1135/OA), where consent has been granted for 27 dwellings, and land east of Southampton Road, (P/18/0068/OA) for 105 dwellings.

- 7.49 The Council acknowledges that at Welborne the minimum requirement is for 10% of the housing to be affordable up to the first 3000 units. Approximately 3960 units are likely to be completed within the plan period to 2037. As a best case at this stage, it is therefore likely that c.396 affordable dwellings will be provided over the plan period.
- 7.50 A viability review mechanism will be in place, starting from the delivery of 3,000 homes, with a view to enabling additional affordable housing on the site above the minimum 10% requirement subject to meeting certain pre-requirements. The developer has indicated that it remains its target to provide as close to 30% affordable housing as possible across the lifetime of the scheme.
- 7.51 Whilst affordable housing provision at Welborne is currently below that originally anticipated by the Council, this must be viewed against an improving position both in respect of a likely reduction in the number of households registered in housing need in the Borough (subject to the outcome of the review of affordable housing needs) and the more proactive role that the Council is now taking to progress affordable housing schemes within the Borough with successful outcomes.

8 HABITATS CONSIDERATIONS

Considerations Arising in the Putative Reasons for Refusal

- 8.1 As set out in section 6 above, it is common ground that the Appeal 1 scheme will have likely significant effects on European Sites. As such, permission cannot be granted unless the Inspector (as competent authority) is satisfied beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Sites. Putative reasons for refusal (c) and (d) relate to impacts on European Sites in respect of nutrients and recreational disturbance. It is common ground that mitigation is required in respect of each of these to avoid an adverse effect on integrity (Habitats SoCG paragraph 5 [**CDD.3**]).
- 8.2 Each of these issues was addressed in paragraphs 8.35 to 8.42 of the report to committee [**CDC.1**] as set out in paragraphs 9.6 to 9.43 of the Council's Statement of Case.
- 8.3 As set out in the Habitats SoCG It is agreed that in order to demonstrate, beyond reasonable scientific doubt, that no adverse effect on the Integrity of any relevant Habitats Site occurs, mitigation / avoidance measures are required in relation to Appeal 1 (reference 3283643 - the residential development) in respect of:
- Increases in nutrient nitrogen within the Solent Habitats Sites;
 - Increases in recreational pressure at the Solent Habitats Sites;
 - Increases in recreational pressure at the New Forest Habitats Sites;
- 8.4 It is also agreed [Habitats SoCG paragraph 6] that for each of the above, appropriate and proportionate mitigation can be secured in principle, for example through a s106 Unilateral Undertaking.

- 8.5 It is agreed at paragraph 13 of the Habitats SoCG that matters relating to nutrient nitrogen are capable of being fully resolved subject to:
- a) the s106 Unilateral Undertaking securing 3.72ha of mitigation land within the community park, and;
 - b) a planning condition being imposed to require the purchase of credits from the Warnford Estate in the amount of 39.04 kg/N/yr.
- 8.6 So far as recreational pressure on the Solent Habitats Sites is concerned, 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 (SRMP). It is common ground that, if a contribution is secured in the unilateral undertaking to provide for the requisite payment towards the Solent Recreation Mitigation Strategy, putative reason for refusal (d) would be resolved (paragraph 16 of the Habitats SoCG).
- 8.7 So far as recreational pressure on the New Forest Habitats Sites is concerned, the Council first became aware of Natural England raising an issue in respect of the New Forest SPA/SAC/Ramsar in their response to the Regulation 19 Local Plan Consultation. This is set out in detail in the Council's Statement of case in paragraphs 9.56 to 9.65 and the Habitats SoCG deals with this at paragraphs 17 to 20. In summary, it is now agreed that subject to the financial commitments being made through the s106 Unilateral Undertaking, matters relating to recreational pressure at the New Forest Habitats Sites are fully resolved.

9 THE LOCAL PLANNING AUTHORITY'S CASE

9.1 In his Summary Note following the CMC the Inspector identified the main issues in Appeal 1 are likely to be:

- Whether or not the proposed development would be in a suitable location, with particular regard to the spatial strategy for the location of new housing and the accessibility of services and facilities for future occupiers, and;
- The effect the proposed development would have 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.

9.2 I address each of these 2 main issues below, as well as other pertinent matters, under four issues: (i) accessibility of the Site; (ii) effect of the Scheme on the Character and Appearance of the Area; (iii) design effects of the Scheme; and (iv) mitigation. I address matters relating to the spatial strategy in section 10 below. I draw on the evidence of Ian Dudley and Philip Russell-Vick on landscape and design matters (respectively).

Issue 1 – Accessibility of the Site

9.3 When the Council considered the 2020 consent it was acknowledged that the poor accessibility to local services and facilities from the site would be materially improved by the package of measures proposed by the applicant. Whilst those same measures are proposed with this current application the development scheme is materially different and, in proposing up to 125 dwellings, [an increase of 127%] could result in more than double the number of residential units previously consented. I consider that the assessment of whether the proposal is sustainably located must be relative in scale and have regard to the quantum of development and the resultant number of residents living on the site in the future. Even taking into account the additional

improvements to the walking and cycling route to Henry Cort College, the footway along Funtley Road east of the application site and the potential to fund the reinstatement of the bus service for an initial period, the proposal would still be on the margins of what would be considered acceptable in terms of acceptable walking and cycling distances to key local services.

The Approach of the Appellants

9.4 Following comments received from Hampshire County Council in which they stated "*...due to the increased levels of pedestrian footfall on the existing network, an NMU audit should be conducted and submitted detailing the acceptability of routes to local amenities and education facilities which are not provided within the development. Particular note should be drawn to the route to Henry Cort Community College as this secondary education facility is at the maximum acceptable walking distance when measured against CIHT recommendations if taking the shortest distance available (that being over the M27 footbridge and along the PRow to the west*" the appellants produced a Non-Motorised User (NMU) audit which considered each potential route to access each of the above locations. Three routes are assessed, namely:

- Routes to Henry Cort Community College;
- Routes to amenities on Highland Road; and
- Routes to facilities within Funtley.

The assessment does not consider the actual walking or cycling distances to any of the facilities.

The Council's Approach

9.5 I have taken a different approach to the Appellants in assessing the accessibility of the Appeal sites to local facilities and services.

9.6 I have carried out a more detailed analysis of the walking distances to the services and facilities within 2km of the appeal site in relation to the accessibility standards set out in background paper on Accessibility (2018) which forms part of the emerging evidence base

for the Regulation 19 consultation draft Local Plan [**CDF.5**], the recommended guidance set out in the CIHT Planning for Walking (2015) [**CDH.29**] and the CIHT Guidelines for Providing for Journey on Foot (2000) [**CDH.27**]. As it relates to accessibility to bus stops, I have also had regard to Buses in Urban Developments (January 2018) [**CDH.30**]. I set out the recommended accessibility standards identified in each document below.

Fareham Background Accessibility Background Paper (2018)

9.7 Recommended accessibility standards are set out in Table 1 of the Background Paper: Fareham Accessibility Study 2018 [CDG.6] as follows:

Facilities and Associated Accessibility Standards, Fareham Accessibility Study 2018

Facilities	Accessibility Standard in Metres (m)	Approximate Walking Time(minutes)
GP Surgeries	1,200m	15
Bus Stops	400m	5
Train Station	1,600m	20
Community and Leisure	800m	10
Secondary Schools	1,600m	20
Primary Schools	1,200m	15
Newsagents /Convenience Store	800m	10
Town / District Centres / Parades	1,600m	20
Designated Employment Areas	1,600m	20
Accessible Green Spaces (unrestricted and not including greenways or incidental spaces) or Play Space	800m	10

9.8 The Accessibility Paper explains at paragraph 3.1 that "*these facilities are often visited on a regular basis and so it therefore seemed prudent to identify accessibility standards for each of them*". Paragraph 3.2 states that "*The list of potential facilities to have access to is not*

exhaustive, those chosen are deemed to be the most relevant and important to the residents of Fareham Borough.”

9.9 Paragraph 4.2 of the *background* paper clarifies that:

‘the community and leisure facilities used in this study are those facilities identified in the Community Infrastructure Background Paper. These are bullet pointed below:

- *Community Halls/ Centres*
- *Libraries*
- *Health and Social Care including Day Centres*
- *Art and Cultural Facilities including museums and art centres*
- *Adult Care Services*
- *Youth Centres*
- *Scout and Guide Centres/Huts*
- *Places of Worship*
- *Public Houses’*

9.10 The background paper goes on to explain in paragraph 4.2 that:

The accessibility distances and timings are based on an average time to walking distance ratio of 5 minutes = 400m. This ratio is what underpins time-distance calculations used in web mapping applications such as Google Maps.

*The Time-Distance standards are an indication of the maximum preferred distance for walking to facilities. **It is felt that beyond these distances, the majority of able-bodied people would begin to consider taking alternative modes of transport in particular, the private car to make journeys.** It is acknowledged however, that there will always be exceptions to the rule in both directions. As such, this study acts as a guide and tool to enable the creation and a judgement to be made on sustainable development in Fareham.” (emphasis added).*

CIHT Guidelines for Providing for Journey on Foot (2000)

9.11 Table 3.2 of the CIHT 2000 guidance sets out suggested acceptable walking distances to town centres, commuting/school and elsewhere. The walking distances are defined as desirable, acceptable and

preferred maximum but which standard should be applied depends on the circumstances of the route as explained at paragraph 3.31:

"Acceptable" walking distances will obviously vary between individuals and circumstances. Acceptable walking distances will depend on various factors including:

- *An individual's fitness and physical ability*
- *Encumbrances, eg shopping, pushchair*
- *Availability, cost and convenience of alternatives transport modes*
- *Time savings*
- *Journey purpose*
- *Personal motivation*
- *General deterrents to walking."*

9.12 As I have set out in 5.58 above, their recommended walking distance for town centres is 200m; for schools and commuting 500m; and, for elsewhere 400m.

9.13 The CIHT guidance further advises at paragraph 3.40 that:

*'if people are to choose to walk rather than drive, at least for more short trips, the pedestrian environment must be **more than just functionally adequate. It needs to be of high quality**, so that the walk is a pleasant experience.'* (emphasis added)

9.14 As I have made clear in 5.62 above, there is clear evidence that supports the view that the CIHT2000 is not outdated, and as also indicated earlier, Inspector Jenkins in the Newgate Lane North/South appeal decisions [**CDJ.4**] stated, inter alia, at paragraph 62:

"the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route."

9.15 Moreover, CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of

the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency.

- 9.16 Paragraph 6.3 of CIHT 2015 it is made clear that even when a walking network complies with the 5Cs [as set out at 5.64 above] then:

"Most people will only walk if their destination is less than a mile away. Land use patterns most conducive to walking are thus mixed in use and resemble patchworks of "walkable neighbourhoods," with a typical catchment of around 800m or 10 mins walk."

- 9.17 Section 6.4 of 'Planning for Walking' also emphasises the importance of the quality of the walking route and identifies that 800m is typically considered relevant for a 'walking neighbourhood':

'Walking neighbourhoods are typically characterised as having a range of facilities within 10 minutes walking distance (around 800 metres). However, the propensity to walk and cycle is not only influenced by distance but also the quality of the experience; people may be willing to walk or cycle further where their surroundings are more attractive, safe and stimulating. Developers should consider the safety of the routes (adequacy of surveillance, sight lines and appropriate lighting) as well as landscaping factors (indigenous planting, habitat creation) in their design.

The power of a destination determines how far people will walk to get to it. For bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point and in town centres, 200 metres (DOENI, 2000). People will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.' (emphasis added).

- 9.18 In CIHT200 at 3.3 and CIHT2015 at 4.1 it is noted that where walking conditions are less than ideal, pedestrians face challenges caused by a combination of factors including: poor provision or maintenance of footways, lack of street lighting and steep gradients and/or steps. As reported in CIHT 2000 such factors are a deterrent to walking.

Access to Bus stops

- 9.19 The recommended walking distance to a bus stop in the FBC 2018 Accessibility Background Paper [**CDG.6**] is 400m. This is in accordance with the CIHT 2015 [**CDH.29**]. Section 6.4 (on page 30) states in part:

'The power of a destination determines how far people will walk to get to it. For bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point.'

- 9.20 Table 4 set out in 'Buses in Urban Developments' (2018) (CDH.13) further advises that the recommended walking distances to bus stops for less frequent bus services should be 300m not 400m which is only considered appropriate for single high-frequency routes (every 12 minutes or better).

Buses in Urban Developments (2018)

- 9.21 Section 4.5 (1) advises that:

'The 400 metre criterion dates from a time when bus use was less challenged by competition from the private car, and it may not be consistent with the goal of shifting mode share from car to bus.'

- 9.22 The guidance goes on to advise at (2):

'The acceptability of walking distance is not a stand-alone consideration. People take account of the total journey time, including the 'in bus' time as well as the walk at either end. Consequently, people will accept longer walks to reach bus services that are fast and direct, or more frequent, and to stops serving a wider range of destinations.'

- 9.23 At (5) it states that:

'The quality of the walking route itself may affect people's judgement of an acceptable walking distance. Safe routes, well overlooked and with visual interest along the way will be

perceived as less onerous than isolated, poorly lit and uninteresting routes.'

9.24 Table 4 then sets out the recommended maximum walking distances to bus stops as follows:

*Recommended maximum walking distances to bus stops.
Buses in Urban Developments. CIHT (2018)*

Situation	Maximum walking distance
Core bus corridors with two or more highfrequency services	500 metres
Single high-frequency routes (every 12 minutes or better)	400 metres
Less frequent routes	300 metres
Town/city centres	250 metres

Analysis of Accessibility Guidance

9.25 I accept that my position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to my assessment should be reduced. Indeed, the PfJoF states it is the task of the professional planner or engineer to decide if a lower standard is acceptable in given circumstances. This approach was affirmed by the inspector at paragraph 63 of the Newgate Lane North and South appeals [CDJ.4].

9.26 Having reviewed the above guidance, I conclude that the recommended walking distances set out the CIHT 2000 guidance and the Council's accessibility standards 2018 vary depending on the type of local service and facilities that are to be accessed. Furthermore, that in applying those standards, regard must also be had not only to the walking distance to those facilities but also to the power of the destination and quality of walking route. It follows, for example, that if walking routes are unattractive or steep, or bus services infrequent, then the maximum recommended distance may not be a reasonable

basis on which to judge the likelihood of journeys being undertaken by foot. An acceptable walking distance might be less than the maximum recommended in such circumstances. This is clearly a matter of planning judgement for the decision maker having regard to the particular circumstances in each case and I place great weight on this as being highly relevant in assessing whether the appeal site is sustainably located.

- 9.27 Notwithstanding the location of the development within the countryside, the scale of the development (comprising up to 125 dwellings in total) and its proximity to Funtley Road suggest that the guidance set out in Buses in Urban Developments is appropriate. I therefore also place great weight on the importance of having good accessibility to a frequent bus service which can provide onwards links to other destinations, including access to the rail network.
- 9.28 Bus stops are located close to the site on Funtley Road and the bus service originally ran approximately once an hour to Fareham and Wickham. However, the service neither started particularly early nor finished late and no buses ran on a Sunday.
- 9.29 The agreed Transport SoCG between the appellants and Hampshire County Council [as highway authority] confirms at paragraph 5.7 that they will pay a fee of £5,500 per annum to secure the provision of the existing bus route 20 for a period of 5 years, up to the point of the required bus turning facility being operational.

Analysis of Walking Distances

- 9.30 Having regard to the above guidance, I have assessed the accessibility of the appeal site to local services and facilities as 'stand-alone' developments which I consider is the proper approach to take. Adopting a precautionary approach, I have also assessed the accessibility of the site to local services and facilities on the basis of the proposed improvement works to enable cycling accessibility to Henry Cort Community College (the nearest secondary school); along with improvements to the available width of the pavement through vegetation clearance and resurfacing works between the appeal site

and the urban area of Funtley east of the railway bridge along Funtley Road.

9.31 The table below shows the distance of various facilities from the appeal site, using the figures provided in the Motion transport Assessment and compares those distances to guidance contained in the FBC Accessibility Paper; Planning for Walking [CIHT 2015] and Providing for Journeys on Foot [CIHT 2000].

Facility	Distance from site access (taken from Motion TA 1/10/2020 unless noted*)	Distance taken from relevant guidance document along with a colour code indication as to whether there is compliance or not with that guidance. Grey shading means it is in compliance with guidance				
		FBC Accessibility Background Paper	Planning for Walking CIHT (2015)	Providing for Journeys on Foot CIHT (2000) Desirable Walking Distance	Providing for Journeys on Foot CIHT (2000) Acceptable Walking Distance	Providing for Journeys on Foot CIHT (2000) Preferred Maximum Walking Distance
Bus stop (Funtley Road)	100m*	400m	NA	NA	NA	NA
Bus stop (Thames Drive)	600m	400m	NA	NA	NA	NA
Fareham Railway Station	3.5km	1600m	800m	500m	1000m	2000m
Orchard Lea Junior School	900m	1200m	800m	500m	1000m	2000m
Henry Cort Community College	2.5km	1200m	800m	500m	1000m	2000m
Henry Cort Community College (using Route 1/A identified in revised NMU audit)	1.8km	1600m	800m	500m	1000m	2000m
Knowle Court Business Park	1400m	1600m	800m	500m	1000m	2000m
McColls PO & Newsagents (Kiln Road)	1100m	800m	800m	400m	800m	1200m
Co-op (Highlands Road)	1400m	800m	800m	400m	800m	1200m
Highlands Road Local Centre (inc. retail, hairdressers, takeaway, pharmacy)	1500m*	1600m	800m	400m	800m	1200m
The Highlands Practice	1700m	1200m	800m	400m	800m	1200m

Gudgeheath Lane Surgery	1700m	1200m	800m	400m	800m	1200m
Highlands Dental Practice	1700m	1200m	800m	400m	800m	1200m
Miners Arms PH	500m	800m	800m	400m	800m	1200m
Funtley Social Club	800m	800m	800m	400m	800m	1200m

9.32 It is clear from this Table that there a number of facilities which are beyond the distances recommended in the Fareham Accessibility Paper and the Desirable and Acceptable walking distances in CIHT 2020. These include the following:

- Henry Cort Community College³
- McColls Newsagent (Kiln Road)
- Co-op (Highlands Road)
- The Highlands Practice (Doctors)
- Gudgeheath Lane Surgery
- Highlands Dental Practice.

9.33 This assessment demonstrates that the site scores poorly in terms of its overall accessibility.

Quality of the Walking Routes

9.34 I have not only analysed the walking distances to those local facilities and services within 2km of the appeal site which includes the nearest bus stops but have also considered the quality of the walking route in assessing how sustainably located the Appeal site is; the quality of the route will advise a planning judgement about the most appropriate walking distance in each circumstance.

Pedestrian Routes to the east

9.35 The most direct route to the local facilities in Funtley – to the pubic house, social club and post office is across the railway bridge. Whilst the appellants propose footway widening to either side of the bridge, the footway at the point of the bridge itself is very narrow.

³ Even using route 1/A in the revised NMU audit the community college remains a 1.8km walk

9.36 CIHT at 3.45 makes clear that providing a satisfactory width of footway is important to enable pedestrians who walk at their chosen speed, to escort children, to walk in groups, and to pass others safely. It is clear that the narrowness of the footway at the bridge cannot be improved and accordingly I consider it will be a deterrent to some users.

9.37 Even the updated NMU audit accepts that there will only be limited pedestrian trips to the Funtley Business Park and is considered suitable only for able bodied pedestrians and cyclists.

Pedestrian Walks to the South

9.38 The Motion TA indicates that the Henry Cort Community College is some 2.5km distant. The Parameter Plan [P3] indicates that the existing permissive route would be diverted from its current route through ancient woodland to a new route from the proposed site entrance up the slope to the existing bridge over the M27. This indicative route takes a direct route up the steepest gradient and there is a lack of detail in respect of the exact nature of this route in terms of surfacing and width.

9.39 The NMU audit considers the walk to Henry Cort Community College with the original route 1B being 2km. Route 1/A is 1.4km but scores very poorly in respect of lack of lighting and surveillance and in places is impossible for cyclists to use. It is accepted that agreement has been reached with HCC Countryside Services Team to a financial contribution to improve this route, but poor surveillance and limited lighting will remain.

9.40 It also appears to me that the distance given in table 4a for the route to the school of 1.4km is not the full distance, but looking at the table appears to start at the end of the bridge on the south side of the M27. If I am correct in this regard it means that the NMU Audit fails to consider the suitability of the first stretch of the route to the school.

9.41 Moreover, as many residents have pointed out, and also from my own experience on the site visit, the route up to the M27 pedestrian bridge will involve a relatively steep incline to the extent that I consider it

would not be a practical or attractive option for some users, such as the elderly or infirm.

Analysis of Walking Distances

- 9.42 The detailed results of my analysis of walking distances to local services and facilities as set out in the Table above demonstrate that a significant number of services lie beyond the 1.2km and 2km maximum walking distances recommended by CIHT.
- 9.43 Taking into account the proposed new public right of way for pedestrians and cyclists from the appeal site, up the hill and across the M27, Orchard Lea Junior School is brought within an acceptable distance following a suitably surfaced and lit route. Highlands Road local centre, where shops, hairdressers, food takeaways and a pharmacy are located, is approximately 1500m away. The doctor's surgery and dental practice on Highlands Road are a similar distance.
- 9.44 The appeal scheme includes proposals for a community building/local shop. As before with the 2020 consent, it is not known at this stage what the building would comprise or actually, as is always the case with a commercial enterprise such as a shop or café which is dependent on market forces, whether it would be delivered depending on the level of interest or demand. However, the fact that space for such a facility is to be provided on the site in close proximity to the proposed housing assists in increasing the relative accessibility of the site subject to the facility being in a form which responds to local need.
- 9.45 It is clear from the Committee Report in 2020 for the 55 dwelling scheme that Officers acknowledged that the poor accessibility to local services and facilities from the site would be materially improved by the package of measures proposed by the appellants.
- 9.46 Whilst those same measures are proposed with this current appeal scheme, the development scheme is materially different and, in proposing up to 125 dwellings, could result in more than double the number of residential units previously consented.

Quality of the Cycling Route to the South

9.47 I am aware that agreement has been reached with HCC for a contribution of £67,133 towards surfacing improvements linking the appeal site with Henry Cort College. The principle of the proposed works has been accepted by Hampshire's Countryside Services team, whilst the appellants have agreed to pay for improvements to this route via a Section 106 agreement.

9.48 Even with that commitment I do not consider the route from the appeal site up to the M27 bridge to be ideal for cyclists. Local Transport Note 1/20 'Cycle Infrastructure Design' dated July 2020 [**FBC.29**] makes clear at 5.9.7 that:

Unlike motor traffic, human physiology means that people can cycle steep gradients that are fairly short but are not capable of maintaining high levels of effort for longer distances. Cycle routes should therefore, where possible, be designed in such a way that the steepness and maximum length of longitudinal gradients meets the requirements of Table 5-8.

Table 5-8: Maximum length for gradients

Gradient %	Desirable maximum length of gradient (m)
2.0	150
2.5	100
3.0	80
3.5	60
4.0	50
4.5	40
5.0	30

9.49 Using the contour map it appears that the length of the route is in the region of 120m with a rise of 19m. This would give an average slope of 9 degrees; or a gradient of 15.8%.

9.50 The same guidance indicates at 5.9.8 that:

Cycle routes along existing roads and paths will usually have to follow the existing gradient although there may be opportunities for signed diversions onto alternative routes to avoid the steepest uphill gradients, or to reduce gradients through earthworks where sufficient space is available.

9.51 Moreover, paragraph 5.9.9 makes clear that:

As well as the length of the gradient, the speed of travel is another important factor to consider. Steep gradients can lead to high speeds for descending cyclists or low speeds for climbing cyclists, which can create hazards for all users of the route. Stopping distances also increase on down gradients in excess of 3%.

9.52 As with my comments on walking it appears to me that the NMU Audit fails to assess the suitability of the first stretch of the route from the appeal site up to the M27 bridge. Even if the route is suitable for some cyclists in my view the gradient would be a deterrent to others and therefore this must reduce the sustainability of the site in terms of using this route by cycling to the south.

The Bus Service

9.53 Whilst I accept that there is an agreed financial contribution to maintain the bus service until the turning area is implemented on the appeal site, it remains the position that bus service 20 runs only every 70 minutes during the week and every hour on Saturday. There is no Sunday service.⁴

9.54 Travelling to Fareham the first weekday service is at 07:42 and the last at 17:15. Travelling from Fareham the first service is at 09:35 and the last bus at 17:50.

9.55 On this basis I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan which anticipates an

⁴ Highway Statement of Common Ground between appellant and HCC, Table 3.1

increase in bus service use, notwithstanding some provision for travel vouchers.

Conclusions

- 9.56 I consider that the assessment of whether the proposal is sustainably located must be relative in scale and have regard to the quantum of development and the resultant number of residents living on the site in the future.
- 9.57 Even taking into account the additional improvements to the walking route to Henry Cort College, the footway along Funtley Road east of the appeal site and the potential to fund the reinstatement of the bus service for an initial period, the evidence in the Table above demonstrates that the proposal would be on the margins of what would be considered acceptable in terms of acceptable walking and cycling distances to key local services. Moreover, no assessment has been undertaken of the impact of the gradient from the appeal site up to the M27 bridge would have on the suitability and extent of usage of this route by pedestrians and cyclists.
- 9.58 Even if it were determined that the site would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely, therefore, that relatively few future residents of the appeal site would cycle, reducing the weight attributable to this factor.
- 9.59 I conclude that the appeal site would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to a limited public transport bus service and to walking and cycling facilities. I do not regard the site as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference

to accessibility, I consider overall that the proposal would conflict with LP1 Policy CS5, LPP2 Policy DSP40 and the Framework.

- 9.60 That said, I do accept that the degree of conflict with the policy in this particular instance is not by itself sufficient to justify the appeal being dismissed. However, it does put the proposal in breach of the development plan and remains a negative in the planning balance.

Issue 2 – Effect of the Scheme on the Character and Appearance of the Area

- 9.61 Issue 2 is addressed by Mr Dudley and in his Proof at 2.23 he notes that an Illustrative Masterplan and Parameter Plan have been submitted with the planning application. These, he notes, show a broadly similar layout to the consented application, but with development extending approximately 30m further to the south, with its southern boundary sitting approximately 5m above the consented development edge in the landscape. A central spine road serves the development and whilst two green corridors are shown through the scheme perpendicular to the prevailing contours, these are notably narrower than those in the consented scheme, representing straight corridors as opposed to wedges that present a wide opening to the surrounding landscape. It is also notable, in his view, that the alignment of the corridors differs from the consented scheme, in which sight lines from the green wedges enabled a clear perception of the valley form and terminated in the upper valley slopes.
- 9.62 In paragraphs 2.26 to 2.30 Mr Dudley undertakes a review of the submitted landscape appraisals, noting at 2.28 that whilst the Addendum references the findings of the previous LVA, it appears to suggest that the short-term landscape effects of 125 dwellings over a greater site area would be 'Moderate adverse', reducing to 'Minor adverse' in the long term with the potential to be beneficial, when the assessed long-term effect of the original, smaller scheme is 'Moderate-Major negative'. He considers that there is no explanation of this difference. Finally, on this matter, he comments at 2.30 that it

is notable that the Addendum states that a key benefit of the scheme is that public access will be available to the upper valley slopes to appreciate the panoramic views. In Mr Dudley's view the opening of the permissive path between Funtley Road and the motorway bridge renders this statement no longer relevant, and the Appeal 1 scheme would in fact now introduce a large number of residential dwellings into these panoramic views.

9.63 In Chapter 3 of his evidence he undertakes a Landscape Baseline Appraisal against which he subsequently reviews the development design as presented. Based upon his analysis in Chapter 3, he concludes⁵ that the landscape receptors of the proposed development are as follows:

- Pastoral land use, surrounded by woodland;
- Location within tributary valley;
- Prevailing settlement pattern located at valley bottom;
- Overall character of the Site; and
- Overall character of the Site and its wider landscape setting.

9.64 In Chapter 4 Mr Dudley undertakes a detailed appraisal of the long-term landscape effects of the scheme, and at 4.51 summarises these landscape impacts as being:

- Pastoral land use, surrounded by woodland: **Major/Moderate adverse.**
- Location within tributary valley: **Major to Major/Moderate adverse.**
- Prevailing settlement pattern located at valley bottom: **Major/Moderate adverse.**
- Overall character of the Site: **Major/Moderate adverse.**
- Overall character of the Site and its wider landscape setting: **Major adverse.**

9.65 He goes on to note at paragraph 4.52 that it is likely that the construction phase would result in a greater degree of impact, albeit on a temporary basis.

⁵ Ian Dudley proof, para 3.33

9.66 At 4.54 he compares these impacts against those which would arise on the permitted scheme stating that in his view:

"the susceptibility to the approved development is less because of the greater alignment with the prevailing settlement pattern and the smaller development area. Similarly, the magnitude of change upon all of my identified receptors is anticipated to be at least one degree lower than the scores attributed to the Appeal 1 scheme in my appraisal, resulting in no impacts that I would consider to be significant."

9.67 In paragraphs 4.55 to 4.57 he considers that matter of 'valued landscape' noting the recent Technical Review and he concludes at 4.57:

"This published view is supported by my conclusion that this is a high value landscape when measured against a common set of criteria as presented within national guidance, and therefore I conclude that the landscape in which the Site is located is a 'valued landscape' for the purposes of applying national planning policy."

9.68 In Chapter 5 Mr Dudley undertakes a visual baseline appraisal of the site and its visual envelope and sets out his assessment of the sensitivity of 9 viewpoints.

9.69 In section 6 Mr Dudley presents his appraisal of the anticipated long-term effects of the proposed development upon specific groups of people identified as visual receptors, taking into account the design information submitted by the Appellants. For the purposes of this assessment, he makes clear that he has considered the illustrative community park proposals as part of the submitted scheme given its requirement under a proposed Section 106 Agreement.

9.70 At 6.43 he summarises the visual impacts that he anticipates will arise from the proposed development as follows:

- Users of permissive path: **Major adverse.**
- Users of Funtley Road: **Moderate adverse.**
- Residents of dwellings on Funtley Road: **Moderate adverse.**
- Users of Honey Lane: **Major/Moderate adverse.**
- Residents of dwellings on Honey Lane: **Major adverse.**

- Users of The Deviation Line (Public Bridleway 515): **Moderate adverse.**
- Users of Public Footpath 86: **Moderate adverse.**
- Users of Public Footpath 15: **Moderate adverse.**
- Users of Funtley Meadow: **Moderate/Minor adverse.**

9.71 He goes on to note at paragraph 6.44 that, as with landscape impacts, it is likely that the construction phase would result in a greater degree of visual impact, albeit on a temporary basis.

9.72 As he did with landscape effects, at 6.54 to 6.49 he compares these identified visual impacts against those which would arise on the permitted scheme stating⁶ that in his opinion:

"the original consented scheme would benefit in a number of ways from its reduced area and density, and the positive design measures enshrined in the layout, to the extent that the overall effect upon the Site's visual environment would not be unacceptable in the context of DSP40(iii) (i.e. the harms are minimised)."

9.73 In section 7 of his Proof he sets out his summary and conclusions, with his landscape appraisal conclusions as 7.12 to 7.15 which I repeat in full below:

7.12 It is the conclusion of my landscape appraisal that the proposed development would result in significant harm in comparison to the existing consented scheme. The substantial increase in the number of dwellings, the development density and developed area, and the reduction and realignment of open space within the scheme is anticipated to fundamentally alter the character of the valley, particularly when perceived from Funtley Road and the permissive path that connects Funtley with Fareham.

7.13 The prevailing settlement pattern of dwellings located at the valley bottom would be lost through development up to the 30m contour, and the sense of visual connection that was preserved through the consented scheme would be lost.

7.14 In my own appraisal and that of the Council's published evidence base, the Site is located within a 'valued landscape',

⁶ Ian Dudley proof paragraph 6.49

which national planning policy requires to be protected and enhanced. In my opinion the Appeal 1 scheme fails to do this, instead resulting in significant harm, which has not been minimised for the purposes of policy DSP40(iii).

7.15 I therefore conclude that the proposed developments are inappropriate on landscape grounds, and that my evidence supports the Council's putative Reason for Refusal (a).

9.74 His visual appraisal conclusions are set out in 7.21 to 7.22 of his Proof and I repeat them in full below:

7.21 Based upon my appraisal, I anticipate that the proposed development would result in significant adverse visual impacts upon a number of sensitive receptors in the immediate vicinity of the Site that cannot be reasonably mitigated. Furthermore, the scheme is anticipated to result in a range of adverse impacts of Moderate significance, both within its immediate vicinity and within the wider valley landscape and these are likely to be collectively significant. By comparison, the permitted scheme on the Site is anticipated to result in lesser impacts across the majority of receptors, on account of its inherently lower density and extent, and the positive design measures that have been agreed with the Local Planning Authority in the development of its layout.

7.72 I therefore conclude that the proposed development is inappropriate on visual grounds, and that my evidence supports the Council's putative Reason for Refusal (a).

9.75 On the basis of the conclusions of Mr Dudley, I find that the Appeal Proposal fails to minimise impacts impact on the countryside and would cause permanent harm to landscape character and visual amenity and would harm a valued landscape.

9.76 I consider those identified unacceptable landscape impacts of the development give rise to conflict with paragraph 174(a) and (b) of the NPPF, Policies CS14 and CS17 of the Core Strategy and Policies DSP6 and DSP40(ii) and (iii) of the LPP2, as well as with policies DS1, DS3, HP4(b) and (c) and HA10(f) of the emerging Local Plan. I further consider that the elements of Policies CS17 and DSP40 that the

development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.

Issue 3 – Design Effects of the Scheme

9.77 Issue 3 is dealt with in the evidence of Philip Russell-Vick and as set out at paragraph 2.4 of his Proof he reviews the Council's Urban Designer's consultation comments, the response provided by the appellants and provides his appraisal of the design of the development proposal. He then considers these and the quality of the proposals and the response to the key characteristics of the area, in the context of the Framework, the PPG, the National Design Guide, local planning policies and the local design SPD.

9.78 As he sets out in his conclusion at 6.9, he has focussed his assessment on three main areas:

- The design approach adopted for the edges of the site, including the relationship envisaged with Funtley Road and the development opposite, the outer southern edge and the relationship this would have with the allocated open space, countryside and as seen in the view from the permissive path to the south and other key characteristics of the area;
- The design of the layout in respect of the view corridors provided, in the context of Policy HA10, part (f), and the degree to which this would meet the objectives of the policy but also whether this makes the most of this asset, to help integrate the development with its surrounds and embellish its sense of place; and
- The degree to which the scheme reflects the character of Funtley village generally but also the key differences between the appeal scheme for 125 homes and the extant permission for 55.

9.79 At 6.10 Mr Russell-Vick sets out his conclusions and states at his first bullet point that:

"The National Design Guide addresses the question of how we recognise well-designed places, by outlining and illustrating the Government's priorities for well-designed places through ten characteristics. As the applications are in outline, several of the ten characteristics are not directly relevant at this stage and are more properly addressed through Reserved Matters applications. I find some support for the scheme in the guidance, but overall, I consider the issues in terms of the design approach and density/dwelling numbers weigh against the proposals and outweigh those elements I do support. In particular, I do not consider that an appropriate degree of understanding of the existing character of the village, its strengths and weaknesses, has been demonstrated and, consequently, any lessons that might have been learnt are not expressed in the scheme. The form of the proposed development, in terms of the way the periphery of the scheme has been designed, the potential reliance on on-street car parking along the perimeter roads by the green space and in some part along the exterior of the development, the potential failure to comply with basic spatial and separation standards and the use of higher proposed densities than the neighbouring settlement, all combine demonstrate that the scheme would not be a good fit with its context, would not reflect existing character or minimise adverse effects on its surroundings. As envisaged, the appeal scheme has failed to make the most of the opportunity to establish the vistas through the site, as successfully as the extant 55 unit scheme does."

9.80 In his second bullet point, Mr Russell-Vick states that the scheme proposals, by the virtue of the design approach and the issues with the density/dwelling numbers, would not represent good design, as a result of the layout and effective landscaping (street trees), would not be sympathetic to local character, including the surrounding built environment and landscape setting and would fail to reflect local design policies and government guidance on design. Consequently, Mr Russell-Vick states that the proposals conflict with the objectives of Paragraphs 126, 130 and 134 of the Framework.

9.81 Finally, in respect of local policies relevant to his evidence, he also considers that the scheme proposals fail to comply with the requirements of Policy CS14 and CS17 of the Core Strategy, Policies

DSP6 and DSP40 of the LPP2, as well as Policies D1 and HA10(a) and (f) of the emerging Local Plan.

9.82 On the basis of his evidence, I agree with these conclusions.

Issue 4 – Mitigation

The Integrity of European Sites

9.83 I have addressed this issue in section 8 above.

Open Space (putative RFR(e))

9.84 The draft UU provides for the provision of a play area of 400 sq m and for financial contributions towards play equipment and maintenance.

9.85 The provision of a country park is also secured through the UU but the extent of this park would be less than that which is secured through the legal agreement on the permitted 55 unit scheme.

Affordable Housing (putative RFR(f))

9.86 As set out in the Planning SoCG, the Scheme provides for a total of up to 125 dwellings, including the provision of up to 50 affordable dwellings on site, thus achieving a full policy-compliant 40% affordable housing provision with the exact mix being determined at reserved matters stage⁷. 6 custom/self-builds will also be provided.

Education (putative RFR(g))

9.87 The requirement for a financial contribution towards education provision will be secured through the unilateral undertaking in agreement with the requirements of Hampshire County Council as the

⁷ Appellants' Statement of Case, paragraph 4.58

education authority. As set out at in the draft UU the contribution would be the sum of £327,609.24 towards additional infrastructure at primary and secondary schools within a 3 miles radius of the site.

Highways (putative RFR(h))

- 9.88 Various financial contributions and works are secured through the UU in order to address various issues raised by Hampshire County Council with regard to access design and sustainability matters.

10 PLANNING BALANCE, SUMMARY AND CONCLUSIONS

- 10.1 As I note at 1.7, the Council does not oppose Appeal 2. This section therefore addresses the planning balance on Appeal 1 only.
- 10.2 As I have set out at 6.1, the Inspector is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to conduct an appropriate assessment of all likely significant effects (i.e. those effects that cannot be excluded beyond a reasonable scientific doubt). It is common ground that there are likely significant effects from Appeal 1 (see the Habitats Statement of Common Ground [**CDD.3**]).
- 10.3 The requirements for appropriate assessment are summarised in **R (Mynydd y Gwynt Ltd) v Business Secretary** [2018] P.T.S.R. 1274 (**CDK.9**) and **R (An Taisce) v SSECC** [2015] Env. L.R. 2 (**CDK.14**). For the appropriate assessment to be “passed” the Inspector must be certain beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Site in perpetuity. If the Inspector is not certain beyond a reasonable scientific doubt that the Appeal 1 scheme will not (alone or in combination with other plans or projects) adversely affect the integrity of a European Site, permission has to be refused unless the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the Appellants do not suggest. A planning balance therefore only needs to be conducted if the Inspector is able to exclude any adverse effects on integrity beyond a reasonable scientific doubt.
- 10.4 In this regard my planning balance proceeds on the assumption that all habitat issues have been resolved and also that open space, affordable housing, education and highways contributions have been secured through the unilateral undertaking.
- 10.5 Section 38(6) of the Planning and Compulsory Purchase Act 2004

sets out the starting point for the determination of planning applications and appeals:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

10.6 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites, so under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining appeal 1 are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application (or appeal) are out of date, this means granting planning permission unless: the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. This approach is reflected in LPP2 Policy DSP1.

10.7 The approach detailed within the preceding paragraph has become known as the 'tilted balance' in that it tilts the planning balance in favour of sustainable development, though it does not displace the statutory priority of the development plan. That said, the tilted balance will only apply in this case if footnote 7 is not triggered in respect of habitats. Provided the appropriate planning obligations are secured I see no reason why footnote 7 would be triggered in this case.

Benefits of the Scheme

10.8 In the Statement of Common Ground a number of benefits are identified under points 20 to 22 of the Table in section 5 and are agreed to be:

- Economic benefits including direct local employment opportunities, indirect benefits through demand for goods and services to support

the construction phase, increased local use of retail and other services, maximising the viability of local businesses and additional Council Tax revenues which will provide further benefits to the local economy and Fareham Borough Council.

- The environmental benefits of the Proposed Development potentially include opportunities for improvement and creation of habitats and biodiversity net gain; also the provision of new footpath links to Funtley.
- The Proposed Development would provide social benefits including contributing to the local economy.

I attach moderate weight to these factors.

10.9 In respect of other social benefits, the proposals would provide a mix of housing types and styles. They would make meaningful contribution towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. In these respects, the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. Taken together, I give those benefits substantial weight.

10.10 Whilst the provision of the community park would normally be considered to be a benefit, the extent of it is less than that which is required to be provided though the s106 agreement on the permitted 55 dwelling scheme. On this basis I cannot treat the community park as a benefit, since it is less beneficial than the fallback position.

10.11 The other benefits put forward, in relation to environmental and highways improvements, nitrate mitigation and the provision of open space are in fact measures required to mitigate the impacts of the scheme and I have not attributed them weight in the planning balance. This was the approach that the Inspector in the Crofton Cemetery appeal adopted in paragraph 72 of her decision letter.

10.12 Overall, I consider that the benefits are significant.

Harms of the Scheme

- 10.13 In respect of local policies relevant to the main issues, I consider that the appeal scheme fails to comply with the requirements of the following Development Plan policies: CS5, CS6, CS14, CS15, CS17, DSP6 and DSP40. The reasons for this conclusion are set out below.
- 10.14 Policy CS5 (Transport Strategy and Infrastructure) which seeks to ensure that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible, (including access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. As set out in my evidence I do not consider that the site is well served by quality public transport, walking and cycling facilities.
- 10.15 Policy CS14 (Development Outside of Development Boundaries) which seeks to protect the countryside, outside development boundaries, from development which would adversely affect its landscape character, appearance and function. As Mr Dudley demonstrates, there will be significant adverse landscape and visual effects, which will harm a valued landscape. Moreover, the proposal will fail to minimise the adverse effects that will arise.
- 10.16 Policy CS15 (Sustainable Development and Climate Change) which requires development to be in a location with sustainable transport options and have access to local services. In my judgement the site is not within a sustainable location with many services being beyond the recommended walking distances and walking to the east being restricted by highway furniture at the bridge and the route to the south up to the M27 bridge being steep with an incline which is likely to deter many people from walking or cycling in that direction.
- 10.17 Policy CS17 (High Quality Design) which requires that all development, buildings and spaces will be of a high quality and proposals will need to demonstrate, inter alia, that they have responded positively to key characteristics of the area. As set out in

the evidence of Mr Russell-Vick and Mr Dudley, the scheme proposals fail to respond to the key characteristics of the area and do not constitute high quality design.

10.18 Policy DSP6 (New Residential Development Outside of the Defined Urban Settlement Boundaries), which, in seeking the protection of the character, appearance and function of the landscape, requires that there will be a presumption against new residential development outside of the defined urban settlement boundaries. For the same reasons given in respect of Policy CS14, in respect of adverse impact to a valued landscape, the scheme fails to accord with this policy too.

10.19 Finally, Policy DSP40 (Housing Allocations), sets out that where (as here) it can be demonstrated that the Council does not have a five year housing land supply, additional housing sites may be permitted outside the urban area boundary, where (among other things) they (ii) are sustainably located and located adjacent to, and well related to, existing urban settlement boundaries; (iii) are sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside; and (v) avoid any unacceptable environmental harm such as poor design. For the same reasons given in respect of Policies CS2, CS5, CS6, CS14, CS17, and DSP6 the scheme fails to accord with this policy too.

10.20 Therefore, to summarise the conflict with planning policy, I consider those adverse effects of the development give rise to conflict with Policies CS5, CS14, CS15, and CS17 of the Core Strategy and Policies DSP6 and DSP40 of the LPP2 and therefore with the Development Plan as a whole. There would also be conflict with paragraphs 126, 130, 134 and 174 of the Framework and policies DS1, DS3, HP4, and D1 of the emerging Local Plan along with the aims of draft allocation HA10.

10.21 I consider that the elements of those local plan policies that the development would be in conflict with are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that the greatest weight should be attached to the conflict with the

development plan that I have identified. This follows the approach adopted by Inspectors in the various appeals that I have referred to.

Conclusions on the Planning Balance

- 10.22 I have identified the benefits of the scheme above and these include the provision of additional housing (beyond that already permitted on site under the existing permission) in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need, albeit that the level of affordable housing provided is not above a policy compliant level. Taken together, I give the social benefits substantial weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. I have ascribed this moderate weight. The proposed biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation. I therefore only ascribe them limited positive weight.
- 10.23 I ascribe habitats mitigation, highway improvements, education contributions, and the provision of public open space no weight in the planning balance as they are all required in order to mitigate the impacts of the proposed development.
- 10.24 As I have made clear at 10.10 above, whilst the provision of the community park would normally be considered to be a benefit, the extent of it is less than that which is required to be provided though the s106 agreement on the permitted 55 dwelling scheme. On this basis I cannot treat the community park as a benefit. In fact, because the extent of the community park would reduce from that which would arise under the 2020 consent (the likely fallback) I consider this to be a harm to which I attribute some weight.
- 10.25 Having regard to the current absence of a 5 year housing supply, it is clear that the 'tilted balance' test will apply. In this regard I have concluded that the proposal would result in significant harm to the character and appearance of the area, which is considered to be a

valued landscape. It is also considered that the proposed development would fail to be sensitively designed to reflect the settlement character of Funtley. I also consider there is some conflict with the policy requirement for the proposal to be sustainably located, though I acknowledge that the degree of conflict with this policy test would not have been sufficient by itself to have led to a refusal of the planning application, but it nonetheless weighs against granting planning permission on the negative side of the planning balance.

10.26 On this basis I remain of the view that the proposal would conflict with policies CS5, CS14, CS15 and CS17 in the LPP1 and DSP6 and DSP40 in the LPP2 (as well as emerging local plan policies and the NPPF). Undertaking this approach, I consider that the identified harm would significantly and demonstrably outweigh the benefits arising from the development.

10.27 I therefore conclude that Appeal 1 should be dismissed.