

**SUPPLEMENTARY AGENDA  
PLANNING COMMITTEE**

**Date:** Wednesday, 24 June 2020

**Time:** 1.00 pm

**Venue:** Teams Virtual Meeting

**7. Planning applications and Miscellaneous Matters including an update on Planning Appeals**

To consider a report by the Director of Planning and Regeneration on development control matters, including information regarding new planning appeals and decisions.

**(8) UPDATE REPORT (Pages 1 - 14)**



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23 June 2020

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## UPDATES

### for Committee Meeting to be held on 24<sup>th</sup> June 2020

#### **Five Year Housing Land Supply**

Following the publication of this report, Officers have been made aware of a recent legal case involving East Northamptonshire Council (ENC), the Secretary of State for Housing, Communities and Local Government (SOS) and Lourett Developments Ltd.

ENC commenced legal action against the SOS for allowing a planning appeal at Thrapston in Northamptonshire. The case related to the Planning Inspector's decision to treat the definition of 'deliverable' within the Glossary of the NPPF as a 'closed list'.

The SOS conceded that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available. The SOS considered that it was appropriate for the Court to make an Order quashing the decisions and remitting the appeal to be determined anew. The Court duly issued an order to this effect.

In light of the position taken by the SOS, it is reasonable to assume that Planning Inspectors will now follow the approach advocated in this case. In turn, it is appropriate for the 5 Year Housing Land Supply Report to be updated to reflect the most recent position of the SOS in respect of the definition of 'deliverable'.

The following changes are therefore made to the published report:

#### **Introduction**

Paragraph 5 should be deleted in its entirety.

Paragraph 6 should be substituted with the following:

Calculation of the Council's 5-Year Housing Land Supply Position based on an annual dwelling requirement of 514 and a 5% buffer gives a projected position of 4.03 years.

Paragraph 25 as currently written, should be deleted from the report and replaced with the following:

As highlighted at Paragraph 18, many Planning Inspectors have regarded the definition within the National Planning Policy Framework as a 'closed list' i.e. if a site does fall within the

definitions at a) or b), set out within paragraph 12 of this report, it should not be included within the Council's 5 Year Housing Land Supply. In the recent case of East Northamptonshire Council, the Secretary of State for Housing, Communities and Local Government (SOS) and Lourett Developments Ltd, the SOS conceded that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available. On this basis planning applications with a resolution to grant planning permission are included within the Council's 5 year housing land supply. In light of the current market conditions, Officers have applied a precautionary approach to the commencement of development in respect of those sites with a resolution to grant. For detailed planning permissions this means that Officers have put the commencement of development as falling within 2021/22, and outline planning permissions being implemented during 2022/23.

In paragraph 34, insert a further bullet point:

- Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30th March 2025

## FIVE-YEAR HOUSING LAND SUPPLY POSITION

The table within the current report should be deleted and replaced with the following:

The following table provides a summary of the Council's current 5YHLS position as per the date of this paper.

HOUSING REQUIREMENT		
A	Local Housing Need: Dwellings per annum 2019-36	514
B	Local Housing Need: Total requirement for 1 <sup>st</sup> April 2020 to 30 <sup>th</sup> March 2025 (A x 5)	2,570
C	5% buffer to ensure choice and competition in the market for land (B x 5%)	129
<b>D</b>	<b>Total housing requirement for period from 1st April 2020 to 30th March 2025 (B+C)</b>	<b>2,699</b>
E	Annual requirement for period from 1st April 2020 to 30th March 2025 (D/5)	540
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 30th March 2025 (discounted by 10% for lapses)	155
G	Net outstanding <b>full</b> planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	371
H	Net outstanding <b>outline</b> planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	99
I	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30th March 2025	709
J	Dwellings allocated in Adopted Local Plan (LP2) that are expected to be built by 30th March 2025	624
K	Dwellings from emerging brownfield sites (Adopted Local Plan - LP1 & LP2) that are expected to be built by 30th March 2025	145
L	Small site windfall allowance (years 4 – 5) (37 dwellings x 2 years)	74
<b>M</b>	<b>Expected housing supply for the period from 1st April 2020 to 30th March 2025 (F+G+H+I+J+K+L)</b>	<b>2,177</b>
<b>N</b>	<b>Housing Land Supply Position over period from 1st April 2020 to 30th March 2025 (M – D)</b>	<b>-522</b>
<b>O</b>	<b>Housing Supply in Years (M / E)</b>	<b>4.03</b>

## DETAILS OF PROJECTED HOUSING SUPPLY FOR THE 5-YEAR PERIOD (1ST APRIL 2020 – 31ST MARCH 2025)

The table within the current report should be deleted and replaced with the following:

Site Address	2020/21	2021/22	2022/23	2023/24	2024/25	Totals
<b>Outstanding Planning Permissions - Small (1-4 dwellings) (10% discount)</b>						
Total across Borough	50	50	55			
						155
<b>Outstanding Full Planning Permissions - Large (5+ dwellings)</b>						
3-33 West Street, Portchester (07/0042/FP)		16				
New Park Garage, Station Road, Park Gate (09/0672/FP)	14					
100 Wickham Road, Fareham (14/1252/FP)			13			
Swanwick Marina, Bridge Road (15/0424/VC)			25	25		
4-14 Botley Road, Park Gate (16/0295/FP)	23					
Land to rear of 184 Bridge Road (P/17/0697/FP)	3					
1 Station Industrial Park, Duncan Road, Park Gate (P/17/1219/PC)			15			
Willows End, 312 Old Swanwick Lane (P17/1390/FP)		6				
Cranleigh Road, Portchester (Appeal allowed, reserved matters application P/17/1170/RM)		37				
Wykeham House School (P/17/0147/FP)	15					
Hampshire Rose, Highlands Road, Fareham (P/17/0956/FP)	17					

HA3 Southampton Road (Land at Segensworth Roundabout) (P/18/0897/FP)		41				
123 Barnes Lane, Sarisbury Green (P/18/0690/FP)				41		
Land to south of Rookery Avenue, Swanwick (P/18/0235/FP)			6			
94 Botley Road, Park Gate (19/0321/PC)			8			
24 West Street, Fareham (19/0654/PC)			7			
Land North of Funtley Road, Funtley (P/17/1135/OA) (P/19/0864/RM)	10	17				
42 Botley Road (P/19/1275/PC) Prior Approval Granted		5				
Stubbington Lane, Hill Head (LP2 H12)		11				
Corner of Station Road, Portchester (LP2 H20)		16				
Sub-total						371
<b>Outstanding Outline Planning Permissions - Large (5+ dwellings)</b>						
Land to the East of Brook Lane & South of Brookside Drive, Warsash - Taylor Wimpey (P/16/1049/OA)		50	35			
Former Scout Hut Coldeast Way Sarisbury Green (P/17/1420/OA)			7			
Land to East of Bye Road (self/custom build) (P/17/1317/OA)			4	3		
Sub-total						99
<b>Resolution to Grant Planning Permission - Large (5+ dwellings)</b>						
Land at Brook Lane, Warsash - Foreman Homes (P/17/0845/OA)			40	70	70	
Land East of Brook Lane (South), Warsash – Bargate Homes (P/17/0752/OA)			20	40	40	
Land South of Greenaway Lane, Warsash - Land & Partners (P/17/0998/OA)			25	60	60	

East & West of 79 Greenaway Lane, Warsash (P/18/0107/OA)			15	9		
East & West of 79 Greenaway Lane, Warsash (P/18/0884/FP)		6				
Land South of Funtley Road, Funtley (P/18/0067/OA)			15	30	10	
Land South West of Sovereign Crescent, Locks Heath (P/18/0484/FP)		24	14			
Moraunt Drive, Portchester (P/18/0654/FP)		16	32			
Southampton Road (Reside) (P/18/0068/OA)			35	50	20	
Egmont Nurseries, Brook Avenue (P/18/0592/OA)			8			
Sub-total						709
<b>Local Plan Policy Compliant Brownfield Sites</b>						
Warsash Maritime Academy				50	50	
Fareham Magistrates Court				45		
Sub-total						145
<b>Local Plan Adopted Housing Allocations</b>						
Wynton Way, Fareham (LP2 H3)			10			
335-337 Gosport Road, Fareham (LP2 H4)				8		
East of Raley Road, Locks Heath (north) (LP2 H6)				20	30	
33 Lodge Road, Locks Heath (LP2 H10)					10	
Land off Church Road				26		
Heath Road, Locks Heath – Hampshire County Council (LP2 H11) (P/17/1366/OA)				35	35	
Welborne (LP3)			30	180	240	

	Sub-total						624
<b>Windfall</b>							
Small (1-4 dwellings)					37	37	
	Sub-total						74
	<b>Total</b>						<b>2,177</b>



## UPDATES

for Committee Meeting to be held on 24<sup>th</sup> June 2020

### ALL ZONES

#### (1) P/18/1118/OA - STUBBINGTON

##### **Land at Newgate Lane (North), Fareham**

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to Land at Newgate Lane North to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

The recommendation at section 9 of the report is revised as follows to include policies omitted from the original recommendation, revised wording in relation to reason for refusal j) and an additional reason for refusal related to the lack of affordable housing provision (now reason for refusal n).

*REFUSE PERMISSION for the following reasons:*

*The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS16, CS17, CS18, CS20, CS21 and CS22 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP14, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 103, 109, 110 and 175 of the NPPF and is unacceptable in that:*

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The proposed development fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the character and appearance of the countryside;*
- c) The provision of development in this location would significantly affect the integrity of the strategic gap and the physical and visual separation of settlements;*
- d) The application site is not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries;*
- e) The proposal would result in the loss of best and most versatile agricultural land;*

- f) *Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development;*
- g) *The proposed access is inadequate to accommodate the development safely;*
- h) *The proposed development would have an unacceptable impact on the junction of old Newgate Lane / Newgate Lane East resulting in a severe impact on the road safety and operation of the local transport network;*
- i) *The proposed development provides insufficient support for sustainable transport options;*
- j) *In the absence of appropriate mitigation for the loss of a low use Brent geese and wader site and in the absence of a legal agreement to appropriately secure such mitigation, the proposal would have a likely adverse effect on the integrity of European Protected Sites;*
- k) *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.*
- l) *In the absence of a legal agreement to secure contributions to open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met;*
- m) *In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- n) *In the absence of a legal agreement to secure the on-site provision of affordable housing, the housing needs of the local population would not be met;*
- o) *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;*

*Note for information:*

*Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points k - o) 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.*

**(2) P/19/0460/OA - STUBBINGTON**

**Land at Newgate Lane (South), Fareham**

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to Land at Newgate Lane South to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

The recommendation at section 9 of the report is revised as follows to include policies omitted from the original recommendation, revised wording in relation to reason for refusal j) and an additional reason for refusal related to the lack of affordable housing provision (now reason for refusal n).

*REFUSE PLANNING PERMISSION, for the following reasons:*

*The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS17, CS18, CS20, CS21 and CS22 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP14, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 103, 109, 110 and 175 of the NPPF and is unacceptable in that:*

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The proposed development fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the character and appearance of the countryside;*
- c) The provision of development in this location would significantly affect the integrity of the strategic gap and the physical and visual separation of settlements;*
- d) The application site is not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries;*
- e) Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development;*
- f) The proposed access is inadequate to accommodate the*

*development safely;*

- g) The proposed development would have an unacceptable impact on the junction of old Newgate Lane / Newgate Lane East resulting in a severe impact on the road safety and operation of the local transport network;*
- h) The proposed development provides insufficient support for sustainable transport options;*
- i) The proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile;*
- j) In the absence of appropriate mitigation for the loss of a low use Brent geese and wader site and in the absence of a legal agreement to appropriately secure such mitigation, the proposal would have a likely adverse effect on the integrity of European Protected Sites;*
- k) 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;*
- l) In the absence of a legal agreement to secure contributions to open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met;*
- m) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- n) In the absence of a legal agreement to secure the on-site provision of affordable housing, the housing needs of the local population would not be met;*
- o) 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.*

*Note for information:*

*Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points k) - o) 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) P/19/1193/OA - TITCHFIELD**

**Land east of Posbrook Lane, Titchfield**

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to East of Posbrook Lane to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

Since the publication of the committee agenda the Council has been notified that a non-determination appeal has been lodged with the Planning Inspectorate. That being the case, Members of the Planning Committee are no longer able to determine the application. Instead, Members are asked to confirm that had they had the opportunity to determine the application they would have REFUSED it for the reasons set out at section 9 of the Officer report.

**(5) P/18/0884/FP - Warsash**

**Land Adj. 79 Greenaway Lane**

5 Year housing land supply

Paragraph 8.4 The 5-year housing land supply has been updated to 4.03 years

Measures to be secured by legal agreement within the recommendation

Point g: 'unforeseen circumstances' amended to 'misconnections'

Further Comments from Natural England

Following consultation with Natural England regarding the Appropriate Assessment, Natural England advised that additional details needed to be secured regarding the long-term monitoring and management of the wetlands in order to conclude that there would be no likely significant effect on the European Protected Sites. The additional details (included at the end of the committee report) were subsequently agreed with the applicant and will be secured by legal agreement.

Officers updated the Appropriate Assessment to include details of the long-term monitoring and management of the reedbed wetland and consulted with Natural

England. Natural England have confirmed that they endorse the Local Planning Authority's Appropriate Assessment:

*"Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given."*

Additional representations have been received since the committee report was published.

The representations raise the following issues:

-The evidence submitted does not prove that all the land has been used for grazing or that it has been used consistently for grazing during the last 10 years.

-Documents relating to the application were not previously made available to the public online. These include the applicant's evidence used to establish the existing land use, the Local Planning Authority's most recent Appropriate Assessment and the Local Planning Authority's calculation of the site's nitrogen budget.

Comment:

Natural England's guidance (4.51) states: *"It is important that farm type classification is appropriately precautionary. It is recommended that evidence is provided of the farm type for the last 10 years and professional judgement is used as to what the land would revert to in the absence of a planning application. In many cases, the local planning authority, as competent authority, will have appropriate knowledge of existing land uses to help inform this process."*

The representations submitted state that because only part of the land has been used for grazing during the last 10 years, the land use should be categorised as open space which has a lower nitrogen level of 5 kg/ha.

The evidence submitted demonstrates that some of the land has been used for grazing and that the remainder has been used for producing hay during the past 10 years. In the absence of a planning application Officers are satisfied that the land could continue to be used for grazing or for growing hay in light of past use, road frontage and enclosed boundaries.

The most recent land use (or the levels that would be produced at the site if planning permission is not granted) informs the levels of nitrogen produced by the site. Natural England's guidance advises that lowland grazing has an average nitrate-nitrogen loss level of 13 (kg/ha) and 25.4 kg/ha for general cropping (growing hay.)

As explained in the report, in order to be nutrient-neutral the proposed development must produce no more nitrogen than the current land use.

Given that the site has been used for grazing horses and growing hay, the Local Planning Authority has taken a precautionary approach to establishing the existing land use in line with Natural England's guidance and has calculated the levels of nitrogen based on if the site was used solely for grazing. This approach is precautionary because it results in a lower level of nitrogen than if the site was used for growing hay. The proposed development (which will produce increased levels of nitrogen) must provide more mitigation to be nutrient neutral than if the higher level associated with growing hay was used to inform the calculation.

Officers have liaised with Natural England regarding the evidence the applicant has provided and are satisfied that the categorisation of the land as lowland grazing rather than general cropping is a suitably precautionary approach in line with Natural England's guidance.