

# **DOCUMENT FL&BH 5.4**

## **PLANNING REBUTTAL TO LPA'S PROOF OF EVIDENCE BY MS JANE PARKER**

**IN RESPECT OF:**

**OUTLINE PLANNING APPLICATION FOR  
LAND AT NEWGATE LANE (NORTH), FAREHAM**

**AND**

**OUTLINE PLANNING APPLICATION FOR  
LAND AT NEWGATE LANE (SOUTH), FAREHAM**

**ON BEHALF OF FAREHAM LAND LP AND BARGATE HOMES LIMITED**

**LPA Ref: P/18/1118/OA and P/19/0460/OA**

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## **1.0 Introduction**

1.1 This rebuttal is prepared in response to the Proof of Evidence prepared by Ms Jane Parker in respect of the appeals at Land at Newgate Lane, North and Land at Newgate Lane, South.

1.2 It responds to the planning policy matters raised in Ms Parker's proof, but does not deal with:

- matters of housing land supply, which are separately addressed in the rebuttal of Mr Neil Tiley;
- matters of sustainability (in respect of access to local facilities) or the Newgate Lane East junction, which are separately addressed in the rebuttals of Mr Anthony Jones and Miss Martha Hoskins; or
- matters of landscape and visual effects (in terms of quantification of impacts), which is separately addressed in the rebuttal of Mr James Atkin.

1.3 Since the exchange of evidence on 2nd November 2020, the parties have agreed updated Statements of Common Ground (dated November 2020, Version 2), which confirm that – based on the engrossment of the drafted legal agreements to secure the relevant planning obligations, the following reasons for refusal fall away:

- Insufficient information to address highway impacts;
- Inadequate site accesses;
- Insufficient support for sustainable transport;
- Insufficient information to ensure protection and enhancement of chamomile colony;
- Absence of mitigation for loss of low use Brent Goose and Wader site (and resultant impact on European Protected Sites);
- Absence of S.106 to secure mitigation for recreational impacts (and resultant impact on European Protected Sites);
- Absence of S.106 to secure open space;
- Absence of S.106 to secure education contributions; and

- Absence of S.106 to secure affordable housing Absence of S.106 to secure a Travel Plan.

1.4 This leaves the following matters only in dispute:

Reason for Refusal	Northern Site	Southern Site
Contrary to Development Plan policies restricting development in the countryside (principle of development)	a	a
Harm to character and appearance of the area	b	b
Harm to the integrity of the Strategic Gap	c	c
Not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries	d	d
Loss of BMV land	e	N/A
Unacceptable impact on Newgate Lane/ Newgate Lane East junction	h	g

1.5 The subsequent sections of this report rebut some of the comments raised in Ms Parker's proof in relation to reasons a to e.

## 2.0 Principle of Development

### Weight to be given to Development Plan Policies

- 2.1 Section 7 of Ms Parker's evidence considers the proper approach to determining the appeals. At paragraph 7.24 she makes clear that where no five-year housing land supply can be demonstrated (or the housing delivery test is failed), the fact that the titled balance test renders the relevant policies 'out-of-date' does not automatically mean that no weight at all can be afforded to them. The appellant agrees with this assertion.
- 2.2 However, the pertinent point which I make in my evidence is that policies CS2, CS6, CS14 and CS22<sup>1</sup> are not only out-of-date in relation to the LPA's housing land supply position, but also because they are predicated upon a housing requirement which was adopted in 2011 (over five years old), and therefore in itself out-of-date given the NPPF requirement (set out at para. 33) to undertake a review every 5 years.
- 2.3 Section 6 of Ms Parker's evidence provides a detailed assessment of the consistency with the NPPF of each of the relevant planning policies. She describes the way in which the Core Strategy recognises the importance of the 'plan-led system' and establishes a strategic vision (including strategic allocations and brownfield development) to deliver new housing in a holistic and sustainable way, as supported by para. 72 of the NPPF. She argues that the role of policies CS2, CS6 and CS14 are consistent with this vision because they serve to restrict development outside of the allocated sites and key settlements identified for development. These comments fail to recognise, however, that since the current housing requirement for Fareham Borough is now higher than set out in the Core Strategy, those identified development sites fail to provide enough housing sites to meet that requirement. Policies which restrict development elsewhere therefore serve to artificially constrain

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<sup>1</sup> Although Ms Parker does not, I also include policy CS22 in this discussion, since it is a policy for the supply of housing in that it serves to restrict housing development within Strategic Gaps.

development and prevent the requirement from being met. This is contrary to the NPPF.

2.4 Whilst I hope the above discussion is helpful, the other critical point which I convey in my evidence, is that in fact any weight to be ascribed to policies CS2,CS6, CS14 and CS22 is not the determinative factor vis-à-vis the principle of development, because in the absence of a five-year housing land supply, policy DSP40 becomes the operative policy. This is agreed by the LPA in the Statement of Common Ground. The restrictive controls of the other policies are therefore in practice replaced by those in DSP40 as the operative policy, and should therefore not be ascribed weight.

2.5 At paragraphs 10.13-10.14 of her proof, Ms Parker accepts that alleged conflict with the five criteria of policy DSP40 is limited to the following:

- Criteria ii – whether the development is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and is well integrated with neighbouring settlements;
- Criteria iii – whether the development is sensitively designed to reflect the character of the neighbouring settlement and minimise any adverse impact on the strategic gap; and
- Criteria v – whether there are any unacceptable environmental implications of the scheme, but only in respect of the safe operation of the highway network and the loss of BMV land (the latter of which is afforded only limited weight by the LPA).

2.6 Accordingly, if the proposals are to be assessed under a 'tilted balance' (as the parties assert they should), then the primary consideration is the identification of harms and benefits identified in relation to the above criteria proportionate to the weight the Inspector ascribes to policy DSP40.

- 2.7 Even if the proposals were to be assessed under a 'straight balance', then the primary consideration for the Inspector would be the degree of compliance with the three contested criteria of policy DSP40 only.

## **Weight to be given to Emerging Planning Policy**

### **a) The Draft Local Plan**

- 2.8 The parties agree that the Emerging Local Plan cannot be afforded significant weight at this time, in line with paras. 48-50 of the NPPF.
- 2.9 Ms Parker's proof, however, contains a contradiction to this statement, noting at paragraph 6.29 that *"the Council has been making development management decisions on sites identified for development in the emerging Local Plan Review."*
- 2.10 One such example is the 'Hallam Land' application referred to in paragraphs 7.12-7.13 of my evidence. Although the application submitted in 2016 for a c. 1,000 home strategic development has since been withdrawn, it is understood that the application would have been supported by the LPA save for the 'nitrates issue'.
- 2.11 The Hallam Land site is located within an area of the Strategic Gap which was previously identified in the emerging Local Plan as a proposed 'Strategic Growth Area'. The Strategic Growth area has now been removed from the current Regulation 19 Consultation version due to an anticipated reduced housing requirement to arise from the 'new standard method'.
- 2.12 What this highlights is that, were it not for the nitrates issue, the LPA would have likely granted consent at sensitive greenfield land within in the gap, which according to the current iteration of the emerging plan, is now surplus to requirements as a housing site.

2.13 It therefore equally follows that the lack of LPA support for schemes such as the appeal proposals likely flows from the consideration that they are unnecessary to deliver the *emerging* housing requirement, rather than a consideration of their contribution under the *current* adopted plan, *current* standard method and *current* five-year housing land supply.

2.14 This is especially problematic, given that:

- the current indications are that the new standard method will not be adopted in its current format (see below);
- as a result, the new standard method may not be determined or implemented for several months; and
- the submission of the emerging Local Plan for examination in its current form is subject to the above (as accepted in the Council's Local Development Proof; see paragraph 9.8 of my evidence and CDF.7).

#### **b) The New Standard Method**

2.15 The parties do not agree on the weight to be given to the emerging 'New Standard Method'.

2.16 The proposal to revise the standard method, as set out in the consultation documents 'Changes to the Current Planning System' and 'Planning for the Future', is yet to be imposed. Objections from the planning and development industry (including bodies such as the RPTI and HBF) have been widely reported, as have criticisms from within the cabinet during a debate in the commons called by Bob Seely (Conservative MP for the Isle of Wight) in October 2020.

2.17 Ms Parker's argument, in section 8 of her evidence, is that any housing land supply shortfall will be short-lived, citing figures of a projected 6.4 year supply



(based on a 20% buffer) or 7.3 year supply (based on a 5% buffer) once the new standard method is implemented (since the currently proposed figures see a lower requirement for Fareham than under the present standard method). This is entirely speculative.

- 2.18 The comment that "the current best evidence is therefore that the current housing shortfall will be translated into a significant surplus in the near future" at paragraph 8.121 of Ms Parker's proof is therefore wholly unjustified given neither party has any assurance of the timing of the implementation of the new standard method, nor of its consequences for Fareham's housing requirement.
- 2.19 Whilst the current proposals would indeed see Fareham's requirement go down, it may well be the case that it reverts back or indeed is increased given the government's targets for the delivery of new homes nationally.
- 2.20 Accordingly, I would respectfully suggest that paragraph 8.121 of Ms Parker's proof should not be given weight by the Inspector.

### 3.0 Landscape Character and the Strategic Gap

#### Siting vs. Design

- 3.1 An important failing in Ms Parker's evidence on this matter (in respect of reasons for refusal b) and c) is that it appears to reflect an inherent presumption against development within the countryside and strategic gap regardless of its impacts.
- 3.2 I have established that criteria iii of policy DSP40 is the operative policy in the absence of a five-year housing land supply, and therefore it is not the presence of development in the countryside/gap which determines conflict with policy, but whether the development is sensitively designed to reflect the character of the neighbouring settlement and minimise any adverse impact on the strategic gap. Similarly, whilst the appellant attributes reduced weight to policy CS22 as an out-of-date policy for the supply of housing, it contains a similar (albeit more stringent) test which relates to the impact of proposals on the *integrity* of the strategic gap, rather than simply resisting built form within it per se.
- 3.3 Comments within Ms Parker's proof (in her own words or as quoted from the evidence of Mr Dudley) which support my theory are as follows:
- Paragraph 13.11 – the inclusion of "The Appeal Sites' location in the Countryside" as a heading within a list of identified harms.
  - Paragraph 10.32 – which states "*...harm to the countryside can not be minimised as the Appeal Development will, on the basis of Mr Dudley's evidence, appear as an incongruous island of development with the countryside, with no clear relationship to the surrounding settlement and highways.*"
  - Paragraph 10.38 – where Mr Dudley asserts that "*the development of any part of the site would significantly erode this open character,*

*reducing the integrity of the Strategic Gap and introducing a much greater level of activity."*

- Paragraph 10.22 – which reads "*... Mr Dudley notes that the appellant's commitment [in the application documents] 'to respect the grain of the local area and acknowledge local character' has not been achieved as the Local Planning Authority's published evidence base clearly states that the key character in this landscape is its openness...*".

3.4 In my view, this failure to recognise the difference between siting (physical location) and urban design means that the LPA's assessment of the proposals under criteria iii is flawed. Criteria iii does not assert that development can not be located within the gap, nor does it provide that development cannot come forward in (allegedly) more sensitive parts of the gap, but rather that it must be *sensitively designed* to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, Strategic Gaps.

3.5 There is no policy which says specific parts of the strategic gap are sacrosanct.

### **The 'Orientation' of the Development**

3.6 Ms Parker's evidence does eventually go on to an assessment of the design of the proposals in relation to gap/countryside impacts, with further reference to Mr Dudley's evidence.

3.7 The applications are supported by a suite of parameter plans and illustrative masterplans which will govern the detailed design to come forward at reserved matters stage. The reserved matters proposals will need to be positively assessed by the LPA against the relevant design policies upon application.

3.8 Mr Dudley's chief criticism of the design proposals is that the appellant's have provided contradictory information with regards to decision making around

how to structure the variety in dwelling density, building height and location of open space across the sites (paragraphs 10.23 to 10.27). I believe this comes from a fundamental misunderstanding of the design intent in relation to which way the developments 'face' and the location of the important landscape/built form elements of the surroundings.

- 3.9 Notwithstanding the fact that the proposed HA2 allocation has now been removed from the emerging Local Plan, the appellants have always and continue to perceive the developments to be subject to more urbanising influences to the eastern boundary. This is in large part due to their location adjacent to the new by-pass (Newgate Lane East) and the clear views of the housing on the western side of Bridgemarky. The proposals would also have the most obvious functional relationship with Bridgemarky in this direction, given the location of local services. This supports the placement of denser, taller development on the eastern edge of the site. In our view, the quality of the gap to the east of appeal sites is already limited given its position sandwiched between Bridgemarky and the by-pass.
- 3.10 By contrast, Peel Common, which the parties agree is not a defined settlement, lies within open countryside. It is characterised by a more rural character where a lower development grain with lower-rise properties would more accurately mirror the rest of the built form along Newgate Lane. Although I would not dispute that the decision to locate the open space on this side of the development was in part driven by a consideration of hydrological and ecological constraints, it is equally considered to be the most appropriate location in terms of creating a focal point and useable amenity space for the local community (which would be evidently less tranquil if located on the by-pass side).
- 3.11 Moreover, by siting the lower density housing and green infrastructure to the west of the appeal sites, the design proposals better respect the western-facing boundary with the strategic gap. It is in our view, this much more substantial part of the gap from Peel Common/the waste water works to Stubbington to the west which is more valuable than the by-pass to Bridgemarky part to

the east.

- 3.12 I would accept that the development proposals will increase traffic along (old) Newgate Lane, however it should be borne in mind that prior to the operation of the by-pass, this road carried all traffic north-south between Fareham and Lee/Gosport/Stubbington, and that the increase arising from the proposals will be minor compared with the previous traffic flows. The previous road conditions are not cited in the Council's evidence base documents as undermining the integrity of the gap previously.

### **Magnitude of the Impact**

- 3.13 Paragraph 10.39 of Ms Parker's evidence (quoting paragraph 5.19 of Mr Dudley's evidence) is clear that in the LPA's opinion, this is a very important and sensitive part of the Strategic Gap where impacts of any development are likely to be felt significantly (hence the reason given at her paragraph 11.90 that the proposed HA2 allocation was one of the first to be dropped in response to the anticipated reduced housing requirement).
- 3.14 Mr Atkin and I have already explained in our evidence why we consider this position to be incorrect, highlighting that the both in terms of preventing coalescence and maintaining the most 'open', uninterrupted and valuable parts of the gap, it is in fact other areas which are much more sensitive. By contrast, the appeal sites are of much lower value in terms of their role within the gap.
- 3.15 Regardless of this dispute about which parts of the gap are more important to its function than others, the assertions in Ms Parker's evidence (quoting Mr Dudley) that development on the appeal sites would "entirely neutralise" the function of the gap (paragraph 10.27) and that "the integrity of the Strategic Gap is likely to be entirely lost" (paragraph 10.40), totally overstate the magnitude of any (alleged) impacts.
- 3.16 Even if the LPA's assessment of landscape impact was to be taken as fact, I do

not consider that a claim that the value of gap is 'entirely' destroyed by the development of the appeal sites can be justified. The gap covers a significant area of land. Development in this location would not result in physical coalescence in this local area, nor would it have any physical or visual impact on other parts of the gap, such as between Stubbington and Fareham to the north, where there is an existing pinch point.

### **Individual vs Cumulative Impact**

- 3.17 Finally, on this point, I would like to comment on Ms Parker's assessment of the landscape impact of the proposals as separate applications (as well as together). Whilst Ms Parker is correct that that Planning Statements make clear that the two proposals are capable of being delivered individually, they (along with the rest of the application and appeal statements) have been consistent in the message that the proposals have always been conceived as a single development and designed holistically. The reason the applications were submitted separately was entirely commercial, related to the option agreement held by each appellant on the two plots of land.
- 3.18 The two sites are subject to almost identical considerations in terms of the reasons for refusal given their adjacent location and shared site constraints, and I consider it likely that the Inspector will reach the same decision for both appeals. Fareham Land LP is not a developer and intends to sell the northern site in the event it obtains outline planning permission. Bargate Homes has already expressed its firm interest. If successful, Bargate would be committed to delivering the consent on the northern site alongside the consent on the southern site.
- 3.19 As such, I consider that the prospect of only one site coming forward to be limited. This is important since Mr Dudley's assertions about the creation of 'isolated' or 'island' development in respect of his individual visual impact assessments are clearly not equally applicable to the two sites as developed in tandem.

## **4.0 Integration with settlement boundaries**

4.1 Section 11 of Ms Parker's evidence assesses the proposals against criteria ii of DSP40, namely whether the development is –

- "sustainably located adjacent to existing urban settlement boundaries";
- "well related to existing urban settlement boundaries"; and
- "well integrated with neighbouring settlements".

### **The Correct Approach to assessing Locational Sustainability**

4.2 Ms Parker assesses this first point, concerning the sustainability of the location of the appeal sites, solely in relation to the ease with which future residents can reach local facilities by non-car modes of travel. There is a clear criticism of the methodology of the appellant in its presentation of travel times/distances to various local services (with reference to the application of the CIHT guidance), which in the appellant's view should be dealt with by a transport planner. This matter is addressed separately in Mr Jones' rebuttal. The appellants will seek to agree the actual travel distances to certain facilities with the LPA in the Statement of Common Ground such that the factual data for this discussion is at least agreed before the inquiry.

4.3 However, more generally, I should like to rebut the insinuation that sustainability of a location is based solely on ensuring limited car travel, and that this can be assessed purely in terms of strict and rigid adherence to recommended walking/cycling distances to local services and the quality of those routes.

4.4 Whilst it is true that the appeal sites do not benefit from as good access to a choice of local facilities compared to say brownfield sites in Fareham, they are not in an isolated location. There are plenty of opportunities to access local services on foot or by-bike, and Fareham and Gosport town centres are only

around 3kms and 6kms away respectively, which would mean even if journeys are made by private motor vehicle, they are not long journeys. The potential for multi-modal and shared trips within such a semi-urban conurbation is also important since many trips could likely combine commuting with school-drop off, supermarket shopping etc.

- 4.5 It is also crucial for the Inspector to recognise that the evidence from HCC Highways accepts that the Travel Plans now prepared to support the appeals overcome reason for refusal h/I, which alleged "insufficient support for sustainable transport options". Therefore, it is accepted that the proposals now provide sufficient support for sustainable transport which build upon the existing sustainability credentials of the sites must also be considered as part of the sustainability of the site in the round. Ms Parker's comment at her paragraph 14.31 that "the appeal proposals would not create feasible opportunities to create a modal shift away from the use of a private motor vehicle" are therefore contradictory to the Transport Statement of Common Ground and should respectively be dismissed.

### **Relationship with Existing Settlement Boundaries**

- 4.6 I wish to rebut the line of argument in paragraphs 11.81 to 11.93 of Ms Parker's proof that, in the absence of the HA2 allocation, the appeal sites can not be well related to the settlement boundary of Bridgemary on the basis they are not physically adjoined to it.
- 4.7 To be "well related" to the settlement boundary is to have proper regard to the identity, character, scale etc. of settlement in terms of ensuring that a new development can achieve a functional and visual relationship with it.

### **Integration with Neighbouring Settlements**

- 4.8 I find some of the comments in Ms Parker's evidence regarding permeability and connectivity between the appeal sites and to Bridgemary misleading.



4.9 First, there is an important point to clarify in relation to the delivery of the pedestrian and cycle link between the north and south site, and another from the south site to Woodcote Lane. These connections have always been a part of the proposals, as shown on the Illustrative Masterplans; compliance with which would be secured through the suggested conditions within the agreed Statements of Common Ground.

4.10 During ongoing negotiations with the LPA since the exchange of evidence, in to overcome any possible confusion around the appellant's commitment to delivery on this matter, the appellant has also proposed the following conditions. These are not agreed by the LPA at this time.

*For Newgate Lane, North:*

*20. **Connectivity** The relevant reserved matters application shall include details of a pedestrian and cycle connection link to the southern boundary of the site, which should co-ordinate with that shown on any detailed planning applications pending or approved pursuant to outline planning permission ref. P/19/0460/OA on the land at Newgate Lane, South. The pedestrian and cycle link shall be implemented prior to 1st occupation.*

*For Newgate Lane, South:*

*20. **Connectivity** The relevant reserved matters application shall include details of a pedestrian and cycle connection link to the northern boundary of the site, which should co-ordinate with that shown on any detailed planning applications pending or approved pursuant to outline planning permission ref. P/18/1118/OA on the land at Newgate Lane, North. The pedestrian and cycle link shall be implemented prior to 1st occupation.*

*21. **Connectivity** The relevant reserved matters application shall include details of a pedestrian and cycle connection link to the southern boundary of the site to join Woodcote Lane. The pedestrian and cycle link shall be implemented prior to 1st occupation.*

4.11 The point I make above about the likelihood of the appeal proposals coming forward together applies equally here – such that these measures are

extremely likely to be secured in the event consent is granted.

- 4.12 Second, the pedestrian crossing described in Ms Parker's paragraph 11.26 is to be upgraded to a Toucan crossing as part of the planning obligations (secured by a legal agreement before the Inspector). This will be delivered in the event either appeal is allowed to the Inspector should have complete reassurance this can be implemented.
- 4.13 Taking the above into account, the likely walking/cycling route from either site to Bridgemary would be south through the development, before turning left onto Woodcote Lane, crossing Newgate Lane East, joining Brookers Lane, before connecting with the suburban streets in Bridgemary. Both paths on Woodcote Lane and Brookers Lane are sufficiently wide, level, predominantly tarmacked shared surfaces (for walking and cycling). I would therefore consider this a sufficiently pleasant walking environment within a suburban context.
- 4.14 The route is partially lit and would benefit from the additional ambient lighting generated by the new development. However, should the Inspector consider this a determinative matter, the appellants would be willing to accept a reasonably worded condition to provide additional lighting as appropriate.
- 4.15 Overall, Ms Parker's comments on the issue of locational sustainability and the ability for the developments to integrate with the neighbouring settlement go against the positive and creative approach to decision-making enshrined in paragraph 38 of the NPPF. This paragraph states that decision makers should "seek to approve applications for sustainable development where possible", whereas Ms Parker's evidence serves only to highlight alleged problems whereby in fact solutions (for example in the form of the agreed Travel Plans or the imposition of possible conditions) exist.