

DOCUMENT FL&BH 5.4
PLANNING PROOF OF EVIDENCE
UPDATE
MR DANIEL JAMES WEAVER BA (HONS) MA MRTPI

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

PINS Refs: 3252180 and 32521885

Prepared by: Daniel Weaver

**NB. Text updated from November 2020 Proof is illustrated in
the colour shown**



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1.0 Personal Background

- 1.1 My name is Daniel James Weaver and I hold a Bachelor of Honours in Town and Country Planning from the University of the West of England. I have been a member of the Royal Town Planning Institute since 2000. I have practiced in the private sector for the majority of my career and have 20 years' experience in advising a variety of clients including landowners, house builders, developers and retail/leisure operators.
- 1.2 I was employed by Development Land Planning Consultants in their Bristol office from 2001 to 2003. In 2004 I joined Pegasus Group, and was made Director in December 2009 and Executive Director in 2014.
- 1.3 I am familiar with the site having provided advice since 2018. I was the Planning Director overseeing all the negotiations with regard to the application, and am therefore also familiar with all related disciplines in respect of the application scheme, i.e. transportation, drainage, ecology, landscape, heritage and design. I have visited the site and am familiar with the wider area.
- 1.4 The evidence which I present in this Proof of Evidence is given in accordance with the guidance of my professional institution, and I confirm that the opinions expressed are my true and professional opinions.

2.0 Scope of Evidence

2.1 My Proof of Evidence deals with both the appeal at Land at Newgate Lane (North) (LPA ref. P/18/1118/OA) and Land at Newgate Lane (South) (LPA ref. P/19/0460/OA). I shall refer to these as the 'northern' site and the 'southern' site respectively.

2.2 The two sites are adjacent to one another, and form a single parcel of land situated between the original Newgate Lane to the west and the newly constructed Newgate Lane East to the east.

2.3 Although the planning applications were made separately to the LPA (and therefore must be submitted as separate appeals), the proposals have always been conceived as a cohesive development. The evidence provided in this document applies to both appeals, unless specifically stated.

2.4 The structure of my evidence is as follows:

- Section 3 sets out the reasons for refusal presented by the LPA;
- Sections 4-6 describe the appeal sites and surroundings, and set out the appeal proposals;
- Sections 7-10 establish the relevant planning policy with a focus on those policies restricting development and the emerging strategy for delivering new homes within the strategic gap;
- Section 11 looks at the housing need and supply within Fareham and the application of the presumption in favour of sustainable development;
- Section 12 presents the appellant's case; and finally
- Sections 13-14 provide an overall assessment of the proposals against the 'titled balance' and offer key conclusions.

2.5 As my evidence is concerned with matters of planning policy, it touches on all the reasons for refusal cited by the LPA but with a particular emphasis on those policies concerning the principle of residential development, the application of the presumption of sustainable development and how the various considerations are to be weighed into the 'planning balance'. Detailed evidence on the other matters is provided by the following specialists:

- Mr Neil Tiley – Housing Land Supply;
- Mr James Atkin – Landscape and Visual Impact;
- Mr Anthony Jones – Highways and Sustainability;
- Ms Martha Hoskins – Highways (Traffic Modelling Specialist);
- **Mr Andre Goncalves – Highways (Benefit to Cost Ratios);**
- **Mr Saumil Patel – Highways (SATURN Modelling); and**
- Mr David West – Ecology.

3.0 Reasons for Refusal

3.1 The appellant submitted appeals against non-determination on 6th May 2020. Both applications were subsequently heard at Fareham Borough Council Planning Committee on 24th June 2020, where members voted in favour of the planning officer's recommendation to refuse for the reasons given.

3.2 The reasons for refusal, as set out below, are the same for both applications with the exception of reason e, loss of best and most versatile agricultural land, which relates to the northern site only, and, protection and enhancement of chamomile, which relates to the southern site only.

"The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS16 [northern site only], 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 [northern site only];*
- f) Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development [reason e for southern site];*

- g) The proposed access is inadequate to accommodate the development safely [reason f for southern site];*
- 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 [reason g for southern site];*
- i) The proposed development provides insufficient support for sustainable transport options [reason h for southern site];*
- i) The proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile [southern site only];*
- 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, 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."

3.3 These reasons are summarised in the table below:

Reason/ Reason reference	Northern Site	Southern Site
Contrary to Development Plan policies restricting development in the countryside	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
Insufficient information to address highway impacts	f	e
Inadequate site accesses	g	f
Unacceptable impact on Newgate Lane/ Newgate Lane East junction	h	g
Insufficient support for sustainable transport	i	h
Insufficient information to ensure protection and enhancement of chamomile colony	N/A	i
Absence of mitigation for loss of low use Brent Goose and Wader site (and resultant impact on European Protected Sites)	j	j
Absence of S.106 to secure mitigation for recreational impacts (and resultant impact on European Protected Sites)	k	k
Absence of S.106 to secure open space	l	l
Absence of S.106 to secure education contributions	m	m
Absence of S.106 to secure affordable housing	n	n
Absence of S.106 to secure a Travel Plan	o	o

- 3.4 The LPA and appellant are working together to enter into a Unilateral Undertaking and S.106 Agreement which will fully address reasons i/h and j to o.
- 3.5 The appellant is also actively engaging with Hampshire County Council highways department to agree a separate Statement of Common Ground, which will confirm that reasons f/e and g/f and i/h are now resolved.
- 3.6 Finally, the appellant has also produced a chamomile management plan which can be conditioned to overcome reason for refusal i (south only).
- 3.7 With these developments in mind, the remaining reasons for refusal are considered to be as follows:

Reason/ Reason reference	Appeal A	Appeal B
Contrary to Development Plan policies restricting development in the countryside	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

- 3.8 This position will be confirmed in the updated Statement of Common Ground.

4.0 The Site and its Surroundings

The Site

- 4.1 The appeal sites comprise a total 10 hectares of agricultural land, bounded by Newgate Lane to the west, Woodcote Lane to the south and Newgate Lane East to the east.
- 4.2 They are comprised a single parcel of land made up of 4 no. fields used for agriculture, together with a further strip of land to the western side of the site separated by the River Alver. The site boundaries and internal field boundaries are made up of hedgerows and mature trees.
- 4.3 In between the two appeal sites lies Hambrook Lodge, which is accessed from Newgate Lane. Hambrook Lodge and its demise is not included in the red line boundary for the site and will be retained.
- 4.4 The appeal sites contain 7 no. existing disused agricultural buildings to the north and east of Hambrook Lodge. Further assessment of these buildings is contained within the Heritage Assessment submitted with the applications.
- 4.5 The appeal sites are located outside the defined settlement boundary identified in the Local Plan policies map, in a 'Strategic Gap' known as the Fareham/Gosport to Stubbington/Lee on Solent Gap (or simply the Fareham – Stubbington Gap).
- 4.6 They are not subject to specific statutory or non-statutory landscape related planning designations.
- 4.7 Recent surveys (Autumn 2019) have established the presence of chamomile and other plant species to the west of the River Alver, indicating that these fields would meet the criteria of a lowland meadow (which is a UK BAP Priority Habitat).
- 4.8 The appeals sites area is partly covered by an area identified as 'low value' for Brent Geese.

- 4.9 The appeal sites are located principally in Flood Zone 1, with small areas to the west of the River Alver falling within Flood Zones 2/3. The River Alver flows in a southerly direction through the western part of the site and is classified as a 'Main River' by the Environment Agency. A number of ordinary watercourses demarcate the existing field boundaries, which all discharge to the River Alver catchment.
- 4.10 Overhead electricity cables transect the site diagonally running in a north-west to south-east direction.
- 4.11 Carriston Cottage (Grade II listed) lies 50m west of the site on the western side of Newgate Lane. Foxbury Cottages and Farmhouse (Grade II listed) lie approximately 250m to the north.
- 4.12 Peel Common Wastewater Treatment Works is located approximately 200m to the west of the sites.
- 4.13 Public Rights of Way footpath 71b provides a link to Tips Copse from Newgate Lane immediately west of the site via the Wastewater Treatment Works. Footpath 71c provides a link to Gosport Road via Albert Road.

Local Surroundings

- 4.14 The site is located 200m from the settlement of Bridgemary (which falls within the local authority area of Gosport), approximately 1km from the settlement of Stubbington and approximately 3km from Fareham Town Centre. Fareham is a large market-town of approximately 45,000 residents which grew rapidly in the 1960s to provide additional housing as an alternative to the urban centres of Southampton and Portsmouth, along with other conurbations along the M27 corridor. Gosport is around 5kms to the south.
- 4.15 The Newgate Lane 'relief road' (ref. P/15/0717/CC), now known as Newgate Lane East is situated immediately east of the site and was completed in August 2018. The relief road diverts traffic travelling between Fareham and Gosport on a new section of road located closer to Bridgemary through the existing Strategic Gap. The existing Newgate Lane, which is immediately west of the sites, continues to provide vehicular access to properties but through-traffic is restricted at Peel Common Roundabout (except pedestrians and cyclists).

4.16 Fareham is connected to Portsmouth Harbour via the River Wallington. The appeal sites are also within easy reach of the beach at Lee-on-Solent and numerous public open spaces.

4.17 The surrounding countryside and waters are subject to various ecological designations. The table below lists the statutory and non-statutory designated sites of ecological value within 5km of the appeal sites.

Site	International Designation	National Designation	Local/Sub-Local Designation
Portsmouth Harbour	SPA, Ramsar	SSSI	
Solent and Southampton Water	SPA, Ramsar	SSSI	
Titchfield Haven		SSSI, NNR	LNR
Browdown		SSSI	
The Wild Grounds		SSSI	LNR
West of River Alver			LNR
Lee on Solent Golf Course			SINC
Tips Copse			SINC
Fort Fareham			SINC
Seafield/Salterns Park			SINC

4.18 The Portsmouth Harbour SPA and Solent and Southampton Water SPA comprise the Bird Aware Solent Region.

4.19 The accessibility of the site to local services is described in detail in Section 4 below.

5.0 Sustainability

Convenience Shopping and Retail

- 5.1 Local services within Bridgemary include convenience stores, a pub, take-away and places of worship, with a local centre on Carisbrooke Road.
- 5.2 Speedfields Retail Park on Newgate Lane includes Asda and Lidl supermarkets, and a number of other retail stores, fast food outlets and coffee shops.
- 5.3 A range of higher order comparison shops are located in Fareham approximately 3km north.

Health and Education

- 5.4 A selection of GPs surgeries and dentists are located in Bridgemary and Stubbington. Bridgemary Medical Centre and The Stubbington Medical Practice are both accepting new patients. The nearest general hospitals are Fareham Community and Queen Alexandra which are 10km and 15km by road respectively.
- 5.5 The nearest primary school is Peel Common (infant with nursery and junior) approximately 250m south-east of the site, Woodcote and Holbrook Primaries are both approximately 800m to the east in Bridgemary. The LPA has also advised that the site is within the catchment area of Crofton Anne Dale (infants and juniors) in Stubbington.
- 5.6 Crofton and Bridgemary are the nearest secondary schools, both of which are within 1km of the site.
- 5.7 Fareham College and CEMAST provide further education opportunities locally.

Leisure and Open Space

- 5.8 Council leisure centres are located in Fareham and south of Bridgemary.
- 5.9 The site is within walking distance of public open spaces including HMS Collingwood playing fields, Brooker's Field Recreation Ground and the Alver Valley Country Park. Lee-on-the-Solent Golf Club is also within walking

distance.

- 5.10 Further afield the site is located within 10km of Titchfield Haven National Nature Reserve to the west and the South Downs National Park to the north which provide access to strategic open spaces.

Employment

- 5.11 There are a significant number of employment opportunities within Fareham and Gosport town centres.
- 5.12 Since the 2015 Daedalus Vision, 650 jobs have been created through the growth of the Solent Airport and Faraday Business Park. The Draft Local Plan (2017 version) allocates Daedalus airfield between Stubbington and Lee-on-the-Solent as a strategic development location for up to a further 98,000 sqm of B1c, B2 and B8 uses, an employment hub and associated infrastructure to support which will generate increased demand for skilled labour.
- 5.13 The CEMAST college was completed on the site in 2014 and provides a complementary facility for construction skills training and the IFA2 electrical interconnector facility which was granted permission by the Council in 2017.

Public Transport

- 5.14 The site is served by bus routes 21 and 21A between Stubbington and Fareham, which stop on Newgate Lane East and together provide a roughly hourly service from approximately 0700 to 1900 hours Monday to Friday and 0900 to 1400 hours on a Saturday. The routes 9 and 9A stopping at the Carisbrooke Road shops also provide a connection to Gosport.
- 5.15 Fareham station has regular services to London Waterloo, London Victoria (via Gatwick Airport), Brighton, Portsmouth Harbour, and Southampton Central. There is also a roughly half hourly service to Portchester, Cosham, Hilsea, Fratton & Portsmouth and Southsea throughout the day from approximately 06:00 till 23:30.
- 5.16 A detailed facilities plan is contained within the Design and Access Statements submitted to support the applications.

6.0 The Appeal Proposals

6.1 The proposed developments have been carefully designed through engagement with the Council's pre-application service. The illustrative layout for both schemes has always been landscape-led, with an emphasis on ensuring that development would respond sensitively to its setting through generous landscaping, retention of existing trees and hedgerows and a set of parameters which will guide a lesser scale of development to the Peel Common edge.

6.2 The proposed development at Newgate Lane (north) is for:

"Outline Planning Permission for the demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure, with all matters except access to be reserved."

6.3 The proposed development at Newgate Lane (south) is for:

"Outline Planning Permission for the demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure, with all matters except access to be reserved."

6.4 The application for the southern site was originally submitted for up to 125 dwellings, but was reduced in response to comments from the Environment Agency about the acceptability of built development on the west of the River Alver.

6.5 Changes were also made to the illustrative layout and parameter plans during the course of the applications, to demonstrate the way in which the site could be development to espouse a more rural and informal character which the LPA's urban design officer encouraged.

6.6 The key features of both proposals when considered together are:

- Demolition of existing vacant farm buildings;
- Up to 190 dwellings across a range of housing types and sizes (to be

determined at the reserved matters stage);

- 40% affordable housing provision (policy compliant);
- 2 no. vehicular access points from Newgate Lane (one for each site);
- Pedestrian links between the two sites and to Woodcote Lane;
- Retention of existing trees and hedgerows;
- Generous landscaping and open space (over-provision versus policy requirements);
- Ecological enhancements including the creation of dark corridors, retention/enhancement of GI corridors and other measures as recommended;
- Net biodiversity gain;
- 2 no. children's play areas (one on each site); and
- Acoustic buffer from the new bypass.

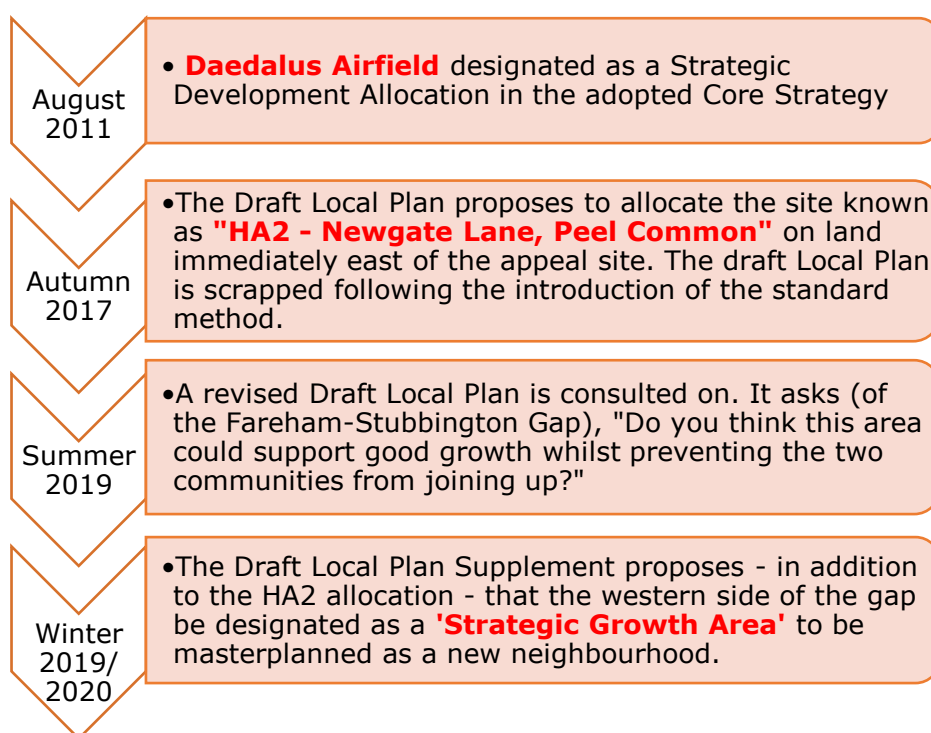
6.7 The applications were each supported by a series of parameter plans which will govern the principles of the proposal and an Illustrative Masterplan.

6.8 The layout and design of the dwellings together with the associated infrastructure (including estate roads, car parking, incidental landscaping, and drainage and utilities services) will be determined at the reserved matters stage.

6.9 Hambrook Lodge and its demise are not included within the appeal sites. The access driveway to Hambrook Lodge will be retained as part of the proposals and the right of access enjoyed by the owners will not be compromised by the proposals. As noted above, the appeal sites do however contain 7 no. disused agricultural buildings (one of which remains only as partial brick walling) to be demolished.

7.0 Planning History and Context – The Strategic Gap

- 7.1 Whilst there is no prior relevant planning history relating to either site, both sites have been promoted for development through the plan-making process.
- 7.2 The sites are located within the Fareham-Stubbington Strategic Gap which restricts development in open land between the two settlements in the interests of preventing coalescence.
- 7.3 Over the course of the drafting of the new Local Plan (2017 – present), the introduction of the 'standard method' has resulted in a need for the LPA to find additional sites to contribute to its housing land supply. It has therefore increasingly explored the possible opportunities for the development of the Strategic Gap in order to meet its housing need.
- 7.4 A summary of the adopted policies and emerging draft policies pertinent to the development of the Strategic Gap – up to February 2020 - are described below.



- 7.5 The proposed HA2 allocation, for 370-475 homes spans the land from Tukes Avenue Play Space/Collingwood Playing Fields in the north to Brooker's Lane to the south, with the existing urban edge of Bridgemary forming the eastern

boundary and the relief road forming the western boundary. Part of the HA2 draft allocation is the subject of a live outline planning application (ref. P/19/1260/OA) – this proposes up to 99 dwellings on the southern part of that site (with the residual 375 dwellings to come forward later). The live application is submitted by the appellant (Bargate Homes Ltd.) and I am confident in the developer's intent and ability to deliver the site subject to planning.

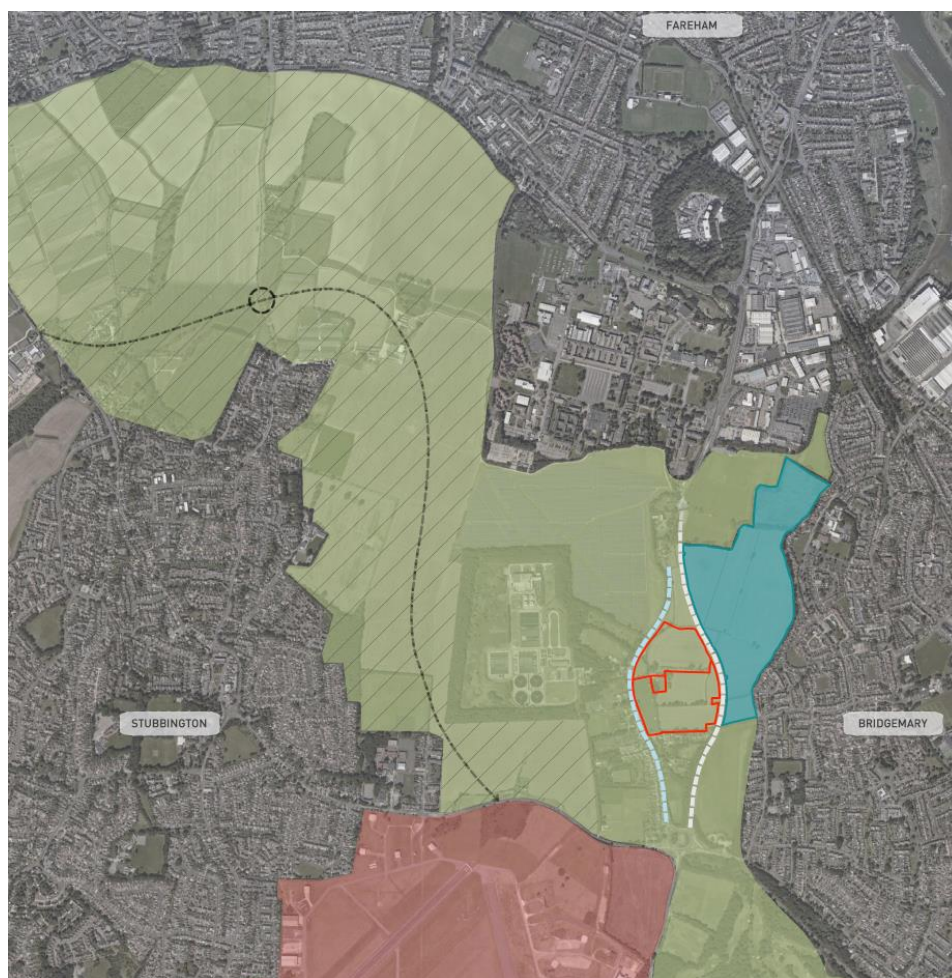
7.6 The proposed 'South of Fareham' Strategic Growth Area, together with the proposed 'North of Downend' Strategic Growth Area were identified to potentially *"play a role in the new Local Plan in meeting the total housing requirement, particularly in relation to unmet need"* (paragraph 3.19 of the Local Plan Supplement) although no quantum of housing (or supporting mixed uses) is set out. The document is clear that development coming forward in these areas should be comprehensively masterplanned in collaboration between the relevant landowners and the Council.









7.7 The location of the proposed HA2 (in dark grey) and the South of Fareham Strategic Growth Area (in red) within the Strategic Gap (green) are shown in the plan below taken from the Draft Local Plan Supplement (**see Core Document CDF.4**).



Figure 3.2. Proposed Strategic Growth Area: South of Fareham

7.8 The appellant has also produced a Context Plan to show the location of these emerging development allocations in relation to the appeal sites. A screenshot is provided below and is also reproduced in high resolution at Appendix 1.



-  NEWGATE LANE APPLICATION SITE
-  HAZ ALLOCATION
UP TO 475 DWELLINGS
-  NEWGATE LANE
-  NEWGATE LANE EAST
-  STUBBINGTON BYPASS ROUTE
-  STRATEGIC GROWTH AREA
-  STRATEGIC GAP
-  HMS DAEDALUS

APPENDIX 1: CONTEXT PLAN

- 7.9 However, in October 2020, the Council published its 'Regulation 19' version plan for consultation. This version of the plan is based upon the assumed adoption of the Government's proposed 'new standard method' (see section 11) which if imposed as drafted, would have **had** the effect of decreasing the five-year housing requirement for Fareham. As a result, the previously proposed allocations of HA2 and the Strategic Growth Area have been removed from the plan as the Council considers they are not needed to meet the requirement.
- 7.10 Notwithstanding the above, the appellant's evidence carefully considers the development of the appeal sites in both the scenarios with and without HA2 coming forward.
- 7.11 In summer 2018, works were completed on Newgate Lane East, which bisects the gap from north to south. The Stubbington Bypass, which bisects the gap from west to east, is scheduled to be completed in 2022.
- 7.12 Other recent significant planning applications submitted for the development of land within the Strategic Gap include an outline planning application for up to 1,027 dwellings, care home, primary school, retail uses, open space and supporting infrastructure (ref. P/15/1279/OA) which was submitted in January 2016 by Hallam Land Management but has now been withdrawn. This site was located within the proposed Strategic Growth Area. It is understood that the application would have been supported by the LPA for a recommendation for approval was it not for an objection from Natural England regarding the impact on nitrates.
- 7.13 A further application on the same site was submitted in July 2020 for up to 1,200 dwellings, care home, primary school, retail uses, community centre, open space and supporting infrastructure (ref. P/20/0646/OA) which remains undetermined at the time of writing.

APPENDIX 2: HALLAM LAND MANAGEMENT LOCATION PLAN

7.14 Persimmon has also submitted an application at Land East of Crofton Cemetery for major residential development within the Gap (north of Stubbington) for 261 dwellings (ref. P/19/0301/FP). Although it was refused, the officer report for planning committee acknowledges that development within the Gap is not harmful per se:

"Whilst the development of the site would not have a significant effect on the integrity of the Strategic Gap and the physical and visual separation of settlements, the overly dense character of the proposal together with the limited levels of landscaping around the periphery would result in a significant landscape effect on the immediate area (paragraph 8.37)".

APPENDIX 3: PERSIMMON LOCATION PLAN AND COMMITTEE REPORT

8.0 Planning Policy

8.1 In this section the national and local planning policy and guidance pertinent to the application site and development proposals is summarised. The plan-led approach to development, as set out by Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires development proposals to accord with the adopted Development Plan unless material considerations indicate otherwise.

The Development Plan

8.2 The adopted Development Plan for Fareham Borough consists of three main documents:

- Local Plan Part 1: 'Core Strategy' (Adopted in August 2011);
- Local Plan Part 2: 'Development Sites & Policies' (DSP) (Adopted in June 2015); and
- Local Plan Part 3: The 'Welborne Plan' (Adopted in June 2015).

8.3 The Core Strategy contains the strategic policies and the DSP contains the development control policies against which this application is assessed. The Welborne Plan deals specifically with the development of the new garden village and is not pertinent to this application.

8.4 The following section sets out the Core Strategy and DSP policies pertinent to the proposals.

Core Strategy

8.5 **Policy CS2 'Housing Provision'** establishes the housing land supply sources to meet the OAN of 3,729 between 2006 and 2026 (excluding Welbourne), which includes allocated sites and brownfield land. The supply of sites will be kept up to date through a regular review of the Strategic Housing Land Availability Assessment (SHLAA) and allocated through Part 2 of the Plan.

- 8.6 **Policy CS4 'Green Infrastructure, Biodiversity and Geological Conservation'** affords protection to important habitats within the Borough including Sites of Special Scientific Interest, Sites of Importance for Nature Conservation, areas of woodland, and the coast and trees will be protected in accordance with the hierarchy of nature conservation designations. In order to prevent adverse effects upon sensitive European sites in and around the Borough, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development.
- 8.7 **Policy CS5 'Transport Strategy and Infrastructure'** promotes the achievement of sustainable integrated transport systems for the Borough including the safeguarding of land for identified works; development will not be permitted where this is prejudicial to the implementation of these schemes. The Council will permit development which does not adversely affect the operation of the local network and is designed and implemented to encourage sustainable travel. Development proposals which generate a high demand for travel should be located in accessible areas.
- 8.8 **Policy CS6 'The Development Strategy'** provides that development will be focused in the following locations:
- Fareham;
 - Fareham Town Centre;
 - Western Wards and Whiteley;
 - Portchester;
 - Stubbington & Hill Head and Titchfield;
 - Welborne; and
 - The Strategic Development Allocations at Coldeast Hospital and Daedalus Airfield.

8.9 It states:

"In identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries including their review through the Site Allocations and Development Management DPD, taking into consideration biodiversity / potential community value, the character, accessibility, infrastructure and services of the settlement and impacts on both the historic and natural environment. Opportunities will be taken to achieve environmental enhancement where possible. 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..."

8.10 **Policy CS14 'Development on land 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 agriculture, 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."

8.11 **Policy CS15 'Sustainable Development and Climate Change'** provides that the Council will seek to secure development in locations which are sustainable and where there will be a minimum negative environmental impact. Development should:

- make efficient use of land;
- seek to properly manage flood risk and waste impacts; and
- meet Code for Sustainable Homes Level 6.

- 8.12 **Policy CS16 'Natural Resources and Renewable Energy'** requires developers to demonstrate best practice in respect of energy and water efficiency, reduction of carbon emissions and implementation of the waste hierarchy to protect natural resources. Loss of best and most versatile agricultural land should be resisted. Development (of more than 1 dwelling or more than 500 sqm of non-residential floorspace) will be encouraged to contribute to the Fareham target of 12MW of renewable energy by 2020.
- 8.13 **Policy CS17 'High Quality Design'** sets out a series of design criteria for new development including the requirement to respond positively to the surrounding environment in terms of scale, form and character, and to promote permeability, legibility, open space and a distinct identity of place. In addition, new housing will be required to: secure adequate internal and external space, dwelling mix, privacy, and sunlight and daylight to meet the requirements of future occupiers.
- 8.14 **Policy CS18 'Provision of Affordable Housing'** provides that on sites of 15 or more dwellings, developers will be expected to provide 40% affordable units unless a lack of viability can be clearly demonstrated.
- 8.15 **Policy CS20 'Infrastructure and Development Contributions'** requires development to provide or contribute towards infrastructure and any necessary mitigation measures through conditions, legal agreement and/or CIL.
- 8.16 **CS21 'Protection and Provision of Open Space'** safeguards the network of open and green spaces for recreation and wildlife value. New development must provide open space in accordance with the Council's standards.
- 8.17 **Policy CS22 'Development in Strategic Gaps'** provides that land within Strategic Gaps will be treated as countryside, and proposals will not be permitted either individually or cumulatively where they significantly affect the integrity of the gap. Strategic Gaps have been identified between Fareham/Stubbington and Western Wards/Whiteley (the Meon gap); and Stubbington/Lee on Solent and Fareham/Gosport.

8.18 This policy is concerned with maintaining the settlement pattern and the local landscape character rather than inferring any landscape value per se:

"Strategic gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. Continuing pressure for high levels of development mean that maintaining gaps continues to be justified." (para. 6.52)

8.19 The policy wording states that boundaries of strategic gaps will be reviewed in accordance with the following criteria:

"a) The open nature/sense of separation between settlements cannot be retained by other policy designations;

b) The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;

c) In defining the extent of a gap, no more land than is necessary to prevent the coalescence of settlements should be included having regard to maintaining their physical and visual separation."

8.20 This commitment to review the boundaries of the strategic gaps was added following the comments in the Inspector's Examination Report on the Core Strategy 2011 (**Core Document CDE.3**), which highlighted the need to provide robust justification to meet legal and statutory requirements. At para. 47 the Inspector writes:

"Concern has been raised by a number of representors that policy CS22's protection of strategic gaps lacks adequate justification – particularly in view of the restrictive approach to development outside settlements set out in policy CS14. Nevertheless, given the built-up nature of much of Fareham Borough and noting that some of the Borough's constituent settlements are separated by relatively narrow open gaps, I accept the Council's argument that the broad identification of strategic gaps in the Core Strategy can play a useful role in guiding its intended review of settlement boundaries. Furthermore, and with

reference to the Government's localism agenda, it is clear that there is strong local support for preventing coalescence between identified settlements. In principle therefore, the policy is adequately justified – although the detailed boundaries of the gaps themselves remain to be reviewed in the SADM DPD. The Council accepts that policy CS22 could provide clearer guidance for that review, and suggests that criteria be added in line with the PUSH Policy Framework for Gaps13 [6.8]. I endorse this change for soundness reasons."

- 8.21 Para. 6.53 of the policy's supporting text goes on to provide that a review of the detailed gap boundaries will be undertaken as part of the DSP to identify the land essential to perform this role and that which cannot be protected by other designations.
- 8.22 This exercise was reported in the LPA's 'Review of Gap Policy Designations' document, published in October 2012 (**Core Document CDG.1**). The report considers the role of the gaps in respect of three assessment criteria, namely physical and visual separation, settlement character and landscape sensitivity, and green infrastructure value, and, for Fareham-Stubbington, concludes that it continues to provide a function which cannot be fulfilled by other policies. For this reason, the Fareham to Stubbington gap remains unchanged in the DSP.

Development Sites and Policies (DSP)

- 8.23 **DSP1 'Sustainable Development'** reflects the presumption in favour of sustainable development as set out in the NPPF. The Council 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.
- 8.24 **DSP2 'Environmental Impact'** states that development proposals should not, individually or cumulatively, have a significant adverse impact on neighbouring development or the wider environment in terms of noise, air or other pollutants. Proposals should have a satisfactory arrangement for the management of waste and protection of water resources.

8.25 **DSP4 'Prejudice to Adjacent Land'** states:

"Where piecemeal development could delay or prevent the comprehensive development of a larger site, a legal agreement will be sought, to ensure that any permitted development does not prejudice the development of adjacent land and that highway access, pedestrian access and services to adjoining land are provided."

8.26 **DSP6 'New Residential Development Outside of the Defined Urban Boundaries'** reinforces the Core Strategy's objective to restrict development outside existing settlements, unless specific circumstances apply. It states:

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

8.27 **DSP13 'Nature Conservation'** provides that development is permitted where designated sites and protected/priority species are protected, and where appropriate enhanced. Proposals resulting in detrimental impacts to these sites or species shall only be granted where impacts are outweighed by the needs for/benefits of the development; and adverse impacts can be appropriately mitigated or compensated.

8.28 **DSP14 'Supporting Sites for Brent Geese and Waders'** states that proposals resulting in 'in combination' effects of recreation on the Special Protection Areas can be satisfactorily mitigated through the provision of an appropriate avoidance and/or mitigation measures. Applications resulting in a 'direct effect' may be subject to Appropriate Assessment.

8.29 **DSP15 'Recreational Disturbance on the Solent Special Protection Areas (SPA)'** states that proposals resulting in 'in combination' effects of recreation on the Special Protection Areas can be satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. Applications resulting in a 'direct effect' may be subject to Appropriate Assessment.

8.30 **DSP40 'Housing Allocations'** sets out the allocated sites for housing on the policies map. In addition, 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."

Weight to be given to Development Plan Policies

8.31 Not all of the policies cited above should be given full weight in the determination of the appeals.

8.32 Whilst the purposes of the policies CS14 and DSP6 are recognized to be 'broadly' consistent with the NPPF, the settlement boundaries upon which their spatial application is predicated are acknowledged as out-of-date. This is not due (only) to the housing land supply situation but is derived from the fact that the settlement boundaries were based on a now out-of-date assessment of housing need. Accordingly, in line with the Supreme Court judgement in Hopkins Homes/Suffolk Coastal¹ (**Core Document CDK.5**), the decision

¹ Ref: [2017] UKSC 37 - Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP and another v Cheshire East Borough)

maker is entitled to accord these policies reduced weight.

- 8.33 Notwithstanding the above, as agreed in the Statement of Common Ground, policy DSP40 is in any event the operative policy for determining the acceptability of residential development on the appeal **sites in the light of the Council's failure to demonstrate a suitable housing land supply**.
- 8.34 The same principle **as at 8.33** applies to the boundaries of the strategic gap **policies CS22 and DSP40**. These were drawn in the context of a given assessment of development needs which is no longer accurate. This is recognized in the earlier versions of the emerging Local Plan (see section 9), in which the Council had proposed significant development within the strategic gap.

Material Considerations

Habitats Regulations Assessment (HRA)

- 8.35 The Local Planning Authority is required to undertake an HRA where proposed plans or projects relate to conservation sites which have been selected and designated on scientific criteria under European law to protect certain species and habitats. These include SPAs which are sites classified in accordance with Article 4 of the EC Directive 2009/147/EC on the conservation of wild birds for certain rare and vulnerable birds, and for regularly occurring migratory species.
- 8.36 The HRA comprises several distinct stages. The first stage of the HRA process includes formally screening a proposed plan or project to decide whether it is likely to have a significant effect on a European designated site. If, at the screening stage, any significant effects of a plan or project on a SPA or SAC (alone or in combination with other plans or projects) can be excluded, then the plan or project can be "screened out" and no further assessment is required. However, where any significant effect of a plan or project on a SPA or SAC (alone or in combination with other plans or projects) cannot be excluded, then the competent authority will be required to assess the effects in more detail through an appropriate assessment, to ascertain whether an

adverse effect on the integrity of any SPA or SAC can be ruled out.

Other Considerations

8.37 Other material considerations of relevance to this proposal are:

- The emerging Local Plan (discussed in Section 9);
- The National Planning Policy Framework (discussed in Section 10);
- Emerging Government guidance on the new housing land supply method (discussed in Section 11);
- Fareham Borough Council Supplementary Planning Guidance, including:
 - Affordable Housing SPD;
 - Design Guidance SPD; and
 - Planning Obligations SPD.
- Solent Waders and Brent Goose Strategy, March 2018 (produced by the SWBGS Steering Group);
- Solent Recreation Mitigation Definitive Strategy, April 2018;
- Natural England Nitrates Guidance, June 2020.

9.0 Emerging Local Plan

9.1 As set out above, the LPA is currently preparing a new Local Plan.

9.2 Paras. 48-50 of the NPPF explain the weight which can be given to emerging policies. Local planning authorities may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan;
- The extent to which there are unresolved objections to the relevant policies; and
- The degree of consistency of the relevant policies with the NPPF.

9.3 It is expressly clear that the refusal of planning permission on grounds of prematurity will seldom be justified where a plan has yet to be submitted for examination, and only then when both the following circumstances apply:

" a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area." (Para. 49).

9.4 The emerging Local Plan has comprised the following iterations:

- Draft Local Plan, published December 2017;
- Issues and Options, published July 2019;
- Supplement to the draft Local Plan, published January 2020; and
- Draft Local Plan, published October 2020.

9.5 The current 'Regulation 19' version plan **was** revised to reflect the Government's technical consultation on 'Changes to the current planning system' and proposed changes to the standard methodology (see section 11 below), which, if implemented, would have **had** the effect of reducing Fareham's housing requirement. In my view, the decision of the Council to publish an updated draft Local Plan for Regulation 19 consultation based on the *assumed* implementation of the Government's proposed new standard method was premature as there was no guarantee that it **would** be forthcoming in its **consultation** form.

~~The timetable for the progression of the local plan is set out within the Local Development Framework (updated 7th September 2020). It is proposed that following a period of consultation on the final Draft Local Plan (Regulation 19), it be submitted for examination to the Secretary of State in winter 2020/2021, i.e. this coming December/January/February.~~

9.6 ~~The timetable for the progression of the local plan is set out within the Local Development Framework (updated 7th September 2020). It is proposed that following a period of consultation on the final Draft Local Plan (Regulation 19), it be submitted for examination to the Secretary of State in winter 2020/2021. This was and remains however contingent on the new standard method reflecting the version consulted upon by Government and on which the Regulation 19 Plan has been predicated.~~

9.7 ~~Indeed, in the event, the Government's proposed standard method was not implemented and instead a variant of the earlier standard method confirmed in the Government's consultation response published on 16th December 2020. This retains the method in its previous and current form except for London and 19 of the most populated cities and urban centres. The minimum housing requirement for Fareham Borough calculated using the amended standard method therefore remains 514dpa.~~

- 9.8 These events have the effect that the Regulation 19 Plan is not fit for purpose because of its fundamental failings in not planning to deliver a level of housing derived from the current Standard Method, thus stymieing FBC's ability to submit the plan to the Secretary of State for examination in its current form.
- 9.9 Fareham Borough Council acknowledges this in its Local Development Scheme where it is stated that the submission of the plan to the Secretary of State is *"subject to the outcome of the technical consultation on 'Changes to the current planning system' and proposed changes to the standard methodology"* (beneath Table 1) (see **Core Document CDF.7**).
- 9.10 As a result, the emerging plan will need to be redrafted prior to submission thereby causing delays in the local plan timetable.
- 9.11 There are significant unresolved objections to the Publication Draft Local Plan including those from the appellant, attached at **Appendix 13**. These objections raise concerns over the soundness of the draft Local Plan and set out how the Plan fails to be consistent with the NPPF by failing to meet objectively assessed housing need.

APPENDIX 13: PEGASUS REPRESENTATIONS – REGULATION 19 CONSULTATION

- 9.12 The decision of FBC to publish an updated draft Local Plan for Regulation 19 consultation based on the assumed implementation of the Government's proposed new standard method has been shown to be fundamentally flawed.

~~The timetable for the progression of the local plan is set out within the Local Development Framework (updated 7th September 2020). It is proposed that following a period of consultation on the final Draft Local Plan (Regulation 19), it be submitted for examination to the Secretary of State in winter 2020/2021, i.e. this coming December/January/February.~~

~~The ability of the LPA to submit the plan to the Secretary of State for examination in its current form and to this timetable will depend on the content of any consultation responses and the implementation of the Government's new standard method on which the assumed housing requirement has been based. It is wholly possible, therefore, and I would argue, likely, that the emerging plan needs to be redrafted prior to submission and/or delayed in its submission.~~

~~Fareham Borough Council acknowledges this in its Local Development Scheme where it is stated that the submission of the plan to the Secretary of State is "subject to the outcome of the technical consultation on 'Changes to the current planning system' and proposed changes to the standard methodology" (beneath Table 1) (see Core Document CDF.7).~~

- 9.13 Ordinarily, a Regulation 19 Plan would carry more weight than a Regulation 18 Plan because it is further through the plan making process. However, this is an unusual situation where, as set out above, the Regulation 19 Plan is unsound and inconsistent with the NPPF because it is not meeting the housing need for the Borough as identified in the current Standard Method. As such, it should be given no weight.
- 9.14 The Regulation 18 Draft Local Plan 2017, together with its Supplement, plans for a level of growth based upon the current standard method. As such, it should be given greater weight than the Regulation 19 Plan, albeit it is acknowledged that this weight is limited due to its stage in the plan making process.
- 9.15 In the present circumstances, given a higher housing target for Fareham now realigned with the Regulation 18 Draft Local Plan, it may be the case that sites such as HA2 and the Strategic Growth Area are proposed for re-allocation in the draft plan.

10.0 Planning Policy Framework

- 10.1 The Housing White Paper 'Fixing our Broken Housing Market', published in February 2017, set out the Government's plan for tackling the housing crisis by planning for "the right homes in the right places". It placed great emphasis on the need to plan for and deliver homes much more quickly and identified issues around the robustness of the current '5-year housing land supply' mechanism, due to inconsistencies in both the OAN and supply methodologies.
- 10.2 In response to the White Paper, the National Planning Policy Framework (NPPF) was revised in July 2018 and again in February 2019.

Section 2: The Presumption in Favour of Sustainable Development

- 10.3 The NPPF is clear that the purpose of the planning system is to contribute to sustainable development. Sustainable development is summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs, and should achieve net gains for economic, social and environmental objectives.
- 10.4 The application of the 'presumption in favour of sustainable development is explained in **para. 11**. For decision-taking this means:

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

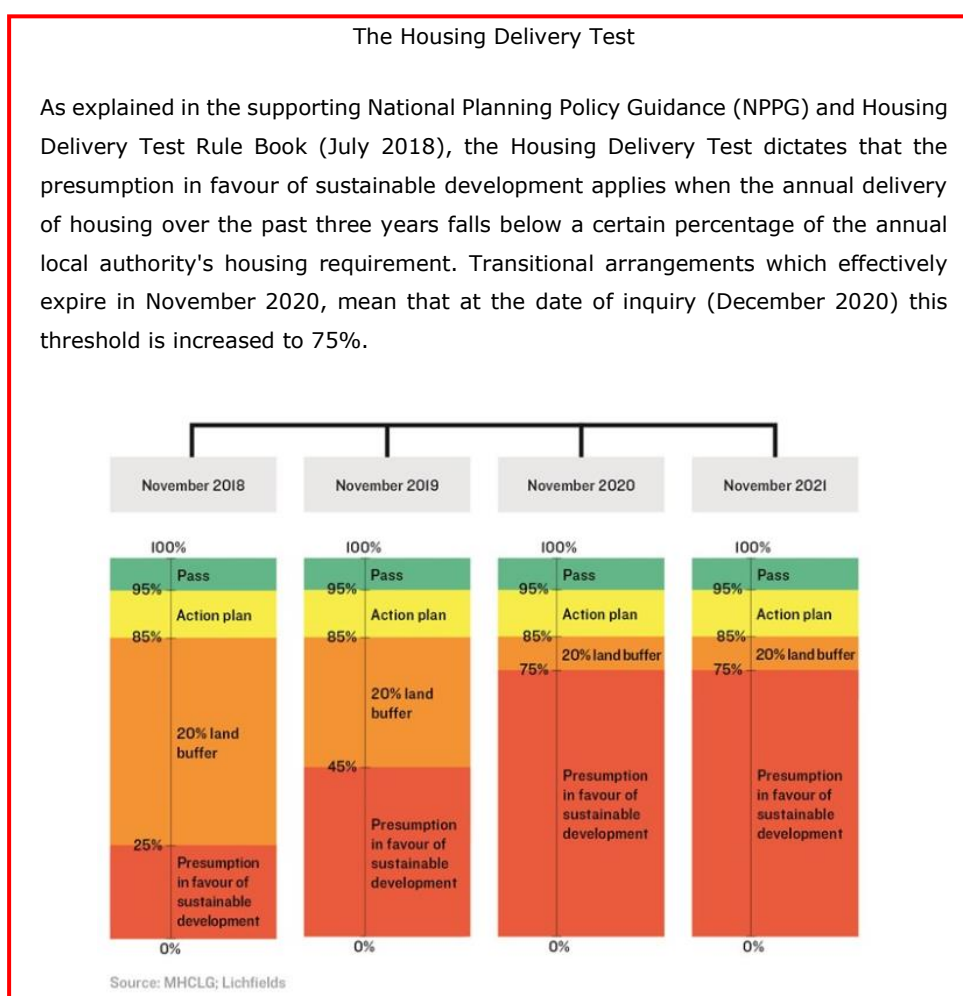
or

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

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

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole **["the tilted balance"]**." [My annotations]

10.5 The circumstances in which policies are deemed 'out of date' is confirmed in footnote 7, which *include* (but are not limited to), for applications involving the provision of housing, where an LPA cannot demonstrate a five-year supply of deliverable housing sites OR where the Housing Delivery Test cannot be met.



10.6 Section 11 below provides a summary of Fareham's housing need and supply, with detailed analysis provided in the evidence of Mr Neil Tiley. Having regard to the Borough's housing land supply position and Housing Delivery Test result, the appellant's evidence demonstrates that on both counts, the presumption is triggered. The LPA has also agreed in the Statement of Common Ground that

it cannot demonstrate a five-year supply of housing land.

10.7 Other circumstances in which relevant policies may be deemed 'out of date' has been confirmed in the Courts, such as in the Hopkins Homes/Suffolk Coastal decision referred to above.

10.8 The circumstances in which policies in the NPPF 'provide clear reason for refusing' a proposed development (such that the presumption does not apply) are confirmed in footnote 6, as follows:

"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 176) 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 63); and areas at risk of flooding or coastal change."

10.9 Specifically, in respect of impacts on local habitat sites, Paragraph 177 confirms that the presumption in favour of sustainable development does not apply where *"the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site."*

10.10 As will be justified in Section 12 of this evidence, the appeals are not caught by para. 177 because significant effects on habitats sites can be appropriately mitigated, and therefore the presumption does apply.

Section 4: Decision-Making

10.11 The NPPF is explicit that decision makers should seek to champion sustainable development by working with applicants to find solutions to approve proposals. Paragraph 38 states:

"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible."

- 10.12 Whilst the NPPF is clear that the planning system should be plan-led, paragraphs 48, 49 and 50 explain that the weight to be given to emerging plans should be in accordance with their stage of preparation. Refusal on the grounds of prematurity would be seldom justified unless a plan has been submitted for examination.

Section 5: Delivering a Sufficient Supply of Homes

- 10.13 The NPPF continues to be an important vehicle to assist the government's target to deliver 300,000 net additional homes a year (The Single Departmental Plan, updated 23 May 2018). **Para. 59** asserts:

"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."

- 10.14 Other sections of the NPPF relevant to the appeal proposals are:

- Chapter 8: Promoting healthy and safe communities;
- Chapter 9: Promoting sustainable transport;
- Chapter 11: Making effective use of land;
- Chapter 12: Achieving well designed places;

- Chapter 14: Meeting the challenge of climate change, flooding and coastal change;
- Chapter 15: Conserving and enhancing the natural environment;
- Chapter 16: Conserving and enhancing the natural environment; and
- Chapter 17: Facilitating the sustainable use of minerals.

11.0 Housing Need and Supply

Housing Need

- 11.1 Given the length of time since the adoption of the Core Strategy (2011) exceeds 5 years, under the provisions of para. 33 of the NPPF, the Objectively Assessed Housing Need it establishes is out-of-date.
- 11.2 In such circumstances, National Planning Policy Guidance (NPPG) dictates that the 'standard method' for calculating housing need applies.
- 11.3 The 'Standard Method' is described explained in the NPPG (Paragraph: 006 Reference ID: 2a-006-20190220). In brief, Local Housing Need should be calculated using a three-step process:
- Set the baseline using 2014-based household projections;
 - Adjust to take account of affordability;
 - Cap the level of any increase.
- 11.4 Para. 73 of the NPPF makes clear that an appropriate buffer should then be applied as follows:
- 5% to ensure choice and competition in the market for land; or
 - 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
 - 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply (to be applied where the annual delivery of housing of housing over the past three years falls below 75% of the annual local authority's housing requirement).

- 11.5 The LPA's current five-year housing requirement based on the most recent published projections and Housing Delivery Test results is set out in the table below, and described in much greater detail in Mr. Neil Tiley's evidence.

Five-Year Housing Requirement (as of June 2020)

Local Housing Need (dwellings per annum)	514
Local Housing Need x 5 years	2,569
5 % Buffer	128
Total 5 Year Requirement	2,697

Future Housing Need

- 11.6 The Government has recently published two documents for consultation, namely Changes to the Current Planning System (**Core Document CDD.3**) and Planning for the Future (the White Paper) (**Core Document CDD.2**), which are described in greater detail in the proof of Mr Tiley.
- 11.7 The consultation on Changes to the Current Planning System proposed a number of changes to national policy and guidance which can be brought in through changes to the PPG or Written Ministerial Statements in the relatively short-term. Of relevance to establishing the housing need, these included the proposal to revise the standard method for calculating the local housing need² although this was ultimately not carried forward.
- 11.8 The new standard method as announced on 16 December should be given full weight as it is now the definitive means of generating the resultant figure against which the five-year land supply position should be assessed.

² As distinct from the standard method for calculating the housing requirement proposed in the White Paper.

~~appellant considers that the proposed revised method should be afforded only very limited weight at present. Until such time as the PPG is revised to reflect a new method, the five year land supply should continue to be assessed using the current method. However, it is possible that a revised standard method (taking account of the consultation responses) could be in place by the time that the appeals are determined and it will then be necessary to assess the five year land supply against the resultant figure.~~

Housing Supply

- 11.9 The Council's most recently published Five-Year Housing Land Supply Position Statement is dated June 2020, which asserts a deliverable supply of 2,177 homes or a 4.03 year supply.
- 11.10 ~~The Council's stated position for the purposes of the appeal is that the deliverable supply is 2,094 homes or 3.9 years.~~
- 11.11 The position of the appellant, however, is that the deliverable supply is 599 homes or 1.11 years.
- 11.12 Regardless of the housing land supply position, the parties have agreed in the Statement of Common Ground that the presumption in favour of sustainable development of paragraph 11d of the NPPF applies (provided the appropriate assessment is 'passed').

12.0 The Appellant's Case

12.1 The matters in dispute relate to whether the appeal sites represent an appropriate location for residential development, and whether the proposals would adequately address their impact in respect of local landscape, agricultural land, the highways network and ecology.

12.2 My evidence is structured as follows:

- **Issue 1** – The presumption in favour of sustainable development and how it should be applied in this case;
- **Issue 2** – The principle of development and the alleged conflict with the spatial strategy;
- **Issue 3** – The landscape character impact of the proposals and the alleged conflict with the Strategic Gap and local character;
- **Issue 4** - The loss of best and most versatile agricultural land (northern site only);
- **Issue 5** – The highways impact of the proposals and the alleged adverse impact on the local network;
- **Issue 6** – The ecological impact of the proposals and the alleged adverse impacts on the ecological value of the site in relation to chamomile (southern site only);
- **Issue 7** - The ecological impact of the proposals and the alleged adverse impacts on the SPAs;
- **Issue 8** – Planning Obligations; and
- **Issue 9** – The benefits of the proposals and the planning balance.

Issue 1: The Presumption in Favour of Sustainable Development and how it should be applied in this case

- 12.3 The appeal proposals represent sustainable development.
- 12.4 The appeal sites are sustainably and accessibly located close to various facilities and services via different modes of sustainable transport, as detailed in Section 5 above. Vehicular connectivity to the wider network is achieved via the upgrading of the junction of Newgate Lane and Newgate Lane East; this junction will not preclude further neighbouring development from accessing Newgate Lane East (e.g. HA2).
- 12.5 The proposed developments will be governed by a Density Parameter Plan which establishes bands of residential densities of up to 32 dph, up to 36 dph and up to 40 dph across the site, which represents an efficient and sustainable use of land in an urban edge location.
- 12.6 The developments will not have significant negative effects on the environment, with all matters related to pollution, hydrology and environmental amenity agreed, and ecological mitigation to be secured through legal agreement.
- 12.7 The construction phase will adhere to best practices as outlined in a Construction Environmental Management Plan.
- 12.8 The proposals also consider their response to climate change during the operational phase, with the electric vehicle charging points and low-water measures to be conditioned.
- 12.9 The LPA cites conflict with policy CS15 in the preliminary paragraph of its reasons for refusal, which states:

"The Borough 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. Development must not prejudice the development of a larger site."

- 12.10 For the reasons above, I maintain that the proposals are in fact in accordance with policy CS15 and meet the NPPF definition of sustainable development in delivering social, economic and environment benefits (see section 13).

The Straight Balance and The Tilted Balance

- 12.11 It is our case that the appeal proposals *could* be positively assessed against para. 11c of the NPPF (the straight balance) because they are compliant with policy DSP40 which is the operative policy for determining the acceptability of residential development in this case.
- 12.12 However, as outlined above, para. 11d of the NPPF is clear that the presumption will apply under the 'tilted balance' where the policies which are more important for determining the application are out-of-date. The relevant policies are out-of-date in this case both because of the housing land supply/housing delivery test position and because the settlement boundaries on which they are predicated are based on an out-of-date housing needs assessment.
- 12.13 Whilst the parties agree that the LPA cannot demonstrate a five-year housing land supply, the extent of that undersupply is at issue. The evidence of Mr Neil Tiley provides a robust assessment of the sites in the LPA's trajectory which informs the appellants position that the supply is 1.11 years, compared with the latest position of the LPA which is 3.9 years.
- 12.14 It is my view, that the shortfall identified by the appellant is very significant, and should be given substantial weight in the planning balance. Even if the Inspector was minded to concur with the LPA's housing land supply position, I would still attribute significant weight to the extent of the shortfall.
- 12.15 The application of the presumption is not restricted by any of the policies listed in footnote 6 or paragraph 177 of the NPPF, because the appeal sites are not located within any of the designations listed, nor do they result in any significant effects on any habitat sites alone or in combination with any other plans or projects (see Issue 7 below).

12.16 Therefore, the titled balance applies, and permission should be granted, *unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.*

12.17 Paragraph 177 confirms that the presumption in favour of sustainable development does not apply where:

"the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site."

12.18 It should be stressed that the inclusion of this caveat in the agreed Statement of Common Ground does not imply that the proposals would fall foul of this requirement, rather that the LPA has simply not tested them against para.177, a responsibility which now falls to the Inspector. The parties **have agreed** a range of measures to be secured through planning obligations, which provide appropriate and adequate mitigation against the proposals in respect of their impacts on the relevant habitats site, as agreed in the Statement of Common Ground (**thus overcoming** the relevant reasons for refusal). Therefore, whilst it is for the Inspector to undertake the appropriate assessment, the appellant has provided robust evidence (by Mr David West) to assist the Inspector which robustly concludes no adverse effects.

Issue 2 – The principle of development and the alleged conflict with the spatial strategy

- 12.19 This issue deals with reasons for refusal a) and d). Reason a) states that development in this location would be contrary to adopted Local Plan policies which seek to prevent residential development in the countryside. Reason d) asserts that the sites are not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries.
- 12.20 The appeal sites are located in the open countryside outside of the defined built-up settlement boundaries which inform the spatial strategy for the supply of housing. The relevant policies for the supply of housing include CS6 'The Development Strategy', CS14 'Development on Land outside Settlements' and DSP6 'New Residential Developments outside of the Defined Urban Boundaries'.
- 12.21 Taken together, these policies serve to direct development to the settlements and strategic allocation sites and perform a restrictive function by strictly controlling to development which would adversely affect the landscape character, appearance and function of the countryside. Acceptable forms of development within the countryside under this policy include those essential for agriculture, forestry, horticulture and infrastructure, with a preference for conversions (as opposed to new buildings). Whilst neither policy explicitly says so, I accept that the intention of providing a list of possible acceptable developments is to serve to exclude those which are unacceptable, such as major residential development, which is clearly on a more significant scale than the terms of the policies seek to permit.
- 12.22 However, these policies are out-of-date, both because of the provisions of footnote 7 in the NPPF (and the Council's lack of five-year housing land supply) and because of the Hopkins Homes/Suffolk Coastal decision vis-à-vis out-of-date settlement boundaries. Therefore, although the proposals are not in accordance with these policies, I find no conflict with the Development Plan as a whole since these policies are out-of-date.

- 12.23 Discussion of these policies becomes something of a moot point when we consider that where the Council does not have a five-year supply of land for housing³, policy DSP40 becomes the operative policy for the supply of housing in any event – a point which is agreed by the LPA in the Statement of Common Ground. This means that the restrictive controls of policy CS14 are relinquished and that instead the provisions of DSP40 only apply.
- 12.24 The critical determinative factor in whether reason for refusal a) can therefore be supported is whether or not the appeal proposals are compliant with the provisions of DSP40. DSP40 allows development in the countryside provided it meets five key criteria.
- 12.25 My assessment of the appeal proposals against the criteria of DSP40 is set out below. Reason for refusal d) is a direct citation of criterion ii. of DSP40, and is therefore also assessed here. The Statement of Common Ground confirm that both parties are satisfied that two of the five criteria (parts i and iv) are satisfied (although I present our evidence on all five).
- 12.26 In each case where relevant, I have considered the development of the two appeal sites in the event that HA2 comes forward and in the event that HA2 does not come forward, noting the weight to be given to the emerging Local Plan in accordance with the NPPF.
- i. The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall**
- 12.27 The parties have agreed in the Statement of Common Ground that this criterion is satisfied.
- 12.28 We have demonstrated that the housing land supply position is significantly less than 5 years. The identified supply of around 1.11 years represents a deficit of 2,098 homes. The proposals for up to 75 dwellings and up to 115 dwellings respectively would assist in reducing the shortfall without over-delivering against local needs.

³ I would note that although the wording of the policy specifically references the housing land supply position against the Core Strategy OAN, the Development Sites and Policies plan was adopted prior to the adoption of the Standard Method, and I consider it to be wholly appropriate to infer that the up-to-date requirement must be used.

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

- 12.29 It is helpful to look at the components of this criterion in isolation.
- 12.30 First, the sites represent a sustainable location. There is good access to local services (as described in Section 4 above and on the facilities plan within the Transport Statement) on foot or by bicycle, and good connectivity to employment opportunities and higher order facilities at Fareham and Gosport via public transport, as agreed in section 2 of the Transport SoCG.
- 12.31 Although the Council suggests that access to Bridgemary is currently severed by Newgate Lane East, the proposed installation of a TOUCAN crossing, as secured by Unilateral Undertaking, would facilitate easy and safe access on foot. This would enable walking/cycling distances to various facilities as below:

Facility/Amenity	Walking Distance (km)	Cycling Distance (km)	Walking Time 80m/min	Cycling Time 320m /min
Education				
Holbrook Primary School	1.4	1.4	18	4
Peel Common Primary School	1.1	1.1	14	3
Bridgemary Secondary School	1.6	1.6	20	5
Woodcote Primary School	1.9	1.9	24	6
Crofton Secondary School	1.8	1.8	23	6
CEMAST	1.9	1.9	24	6
Crofton Anne Dale Primary School	3.5	3.5	44	11
Fareham College	3.9	4	49	13
Onward Travel Connections				
Fareham Railway Station	4.0	4.0	50	13
Newgate Lane East Bus Stop	0.7	0.7	9	2
Health				
Bridgemary Medical Centre	1.8	1.8	23	6
Stubbington Medical Practice	2.8	2.8	35	9
Shopping				
Speedfields Retail Park (Asda/B&M)	1.4	1.6	18	4

Carisbrooke Road Local Centre (convenience store, chip shop, takeaway etc.)	1.7	1.8	21	5
Bridgemary Co-op Store	2.3	2.3	29	7
Fareham Town Centre	4.2	4.2	53	13
Leisure and Open Space				
Brookers Field Recreation Ground	0.7	0.7	9	2
Carisbrooke Arms Public House	1.5	1.5	19	5
Lee-on-the-Solent Golf Club	1.5	1.6	19	5
Bridgemary Methodist Church	2.2	2.2	28	7
Alver Valley Country Park	2.4	2.4	30	8
Fareham Leisure Centre	4.4	4.6	55	14

12.32 It is also important to stress that there is easy access by bus via Newgate Lane East trips to higher order services e.g. in Fareham town centre. These services are extremely convenient and represent very realistic opportunity for commuting, travel to school and so on, having regard to the day-to-day journeys of future residents.

Bus Service and Departure Point	Frequency of Service (weekday)	Destination	Peak AM Travel Time (and example service)
21 from Newgate Lane East bus stop (corner of Woodcote Lane)	Apx. hourly	Stubbington Village	7 mins (08:40 - 08:47)
		Fareham Bus Station	18 mins (09:12 - 09:30)
9/9A from Carisbrooke Road Shops, Bridgemary	Apx. every 20 mins	Gosport Bus Station	29 mins (07:40 - 08:09)
		Fareham Bus Station	11 mins (08:09 - 08:20)
		Fareham Rail Station	8 mins (08:09 - 08:17)

Times taken from published First timetables, valid from 30/08/2020 to 24/10/2020

12.33 Further evidence of the sustainability of the location of the sites can be found within the proof of Mr Anthony Jones.

12.34 Secondly, we turn to adjacency.

12.35 This criterion is principally concerned with "existing urban settlement boundaries". The appeal sites are located between the area known as Peel Common (which does not have a settlement boundary in planning policy) and the Gosport suburb of Bridgemary (which does), and for this reason I focus on adjacency with Bridgemary.

12.36 The LPA's intention to allocate the HA2 site has been expressed through every stage of the preparation of the new Local Plan until the most recent publication of the Regulation 19 document in October 2020. The ability of the LPA to submit the plan to the Secretary of State for examination in its current form will depend on the content of any consultation responses and the implementation of the Government's new standard method on which the assumed housing requirement has been based. It is wholly possible, therefore, that the HA2 allocation could be reintroduced. In the event that the proposed HA2 allocation comes forward, the boundary of Bridgemary will be extended into Fareham Borough, bringing the edge of Bridgemary physically contiguous to Newgate Lane East and the appeal sites.

12.37 However, the proposals are not reliant on the HA2 allocation coming forward to meet this criterion. Even without HA2, they are close enough to the urban boundary of Bridgemary to the extent that, once occupied, they would have a clear visual and functional role as part of that settlement.

12.38 The meaning of the word 'adjacent' has been considered in the Courts. With reference to *Simmonds v SSE* and *Rochdale MDC [1981]*, Planning Inspector Anthony J Wharton stated in an appeal decision on the matter:

"The word 'adjacent' is not defined in the Planning Act and the courts have held that legislators were not likely to have intended 'a one size fits all approach'. The common dictionary definition of 'adjacent' is 'lying near to' or 'contiguous',

although Case Law also clarifies that that 'adjacency' does not equate to something being 'contiguous' or 'abutting'. Thus, the position established by the courts is that the word 'adjacent' does not necessarily mean [that the fence has to be] abutting or touching." (Core Document CDJ.14; Mr Kevin Major-Morell against the decision of Reigate and Banstead Borough Council)

12.39 This appeal decision reinforces the notion that adjacency should have regard to the visual and functional connection between places or things, rather than simply the physical manifestation of said places or things. This connectivity between the appeal sites and the surrounding areas of Bridgemary and Peel Common is discussed in more detail in the evidence of Mr James Atkin.

12.40 This principle has been accepted by Fareham Borough Council in previous decisions where development proposed in proximity to (but not physically next to) the settlement boundary has been assessed to meet criteria ii.

12.41 For example, in the committee report for the proposed development adjacent to 125 Greenaway Lane, Warsash (July 2019), the officer states:

"The urban settlement boundary is located within relatively close proximity to the north, east and south of the site. The site is near leisure and community facilities, schools and shops. Officers consider that the proposal can be well integrated into the neighbouring settlement including other nearby development proposals that have resolutions to grant outline planning permission. The proposal would therefore be in accordance with point ii of Policy DSP40." (paragraph 8.24)

APPENDIX 4: 125 GREENAWAY LANE, WARSASH COMMITTEE REPORT

12.42 Another committee report for a similarly located site at land adjacent to 79 Greenway Lane (October 2018) makes a similar assessment:

"The second test of Policy DSP40 is that "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".

The application site is in close proximity to the defined settlement boundary of Warsash and to leisure and community facilities, schools and shops.

The illustrative masterplan demonstrates that the overall layout and form of the development could be designed to be sympathetic with existing properties and commercial premise which adjoin the site. Up to 30 houses are proposed which equates to a net density of 17.5 dwellings per hectare. The detailed reserved matters application would need to demonstrate and ensure that the scheme complies with the Fareham Borough Design Guidance Supplementary Planning Document (Excluding Welborne). This would ensure that the amenity of future occupiers and existing neighbouring property occupiers would be acceptable.

Subject to the layout of the site and design form and how it might relate to the surrounding built form, officers consider that the development of up to 30 units could be accommodated on this site. It is therefore considered that the development would be sustainably located and can be well integrated with the neighbouring settlement in accordance with point ii) above."

APPENDIX 5: 79 GREENAWAY LANE, WARSASH COMMITTEE REPORT

12.43 Moreover, in the committee report for the proposed development at Land north of Funtley Road, officers recognise the sustainability credentials and setting of the proposals, not just its physical location:

"In relation therefore to this second test of Policy DSP40, officers consider the package of measures proposed by the applicant to materially improve the sustainability of the location. Notwithstanding, and although the site lies immediately opposite a housing development of an urban nature, the site does not lie adjacent to the existing urban settlement boundary" (page 9).

APPENDIX 6: FUNTLEY COMMITTEE REPORT

- 12.44 Finally, the proposals are well related to and well-integrated with the neighbouring settlement. As demonstrated within the Design and Access Statements, the density and scale of the proposed development as established on the parameter plans has been carefully considered to respect the local built form and to relate well to surrounding dwellings, albeit the detailed layout and appearance will form reserved matters. In particular, the Illustrative Layout has carefully sought to ensure that higher density development of a more urban character faces HA2/Bridgemary, whilst lower density, looser, more rural-style development and open space addresses Peel Common.
- 12.45 This relationship with HA2 is accepted in the Council's committee report at para. 8.51 where it states:
- "The noise attenuation barriers associated with the construction of the Newgate Lane East relief road would prevent any actual physical coalescence, however the sense of separation would be lost as the housing on either side of the road would be perceived as part of a continuous settlement in views from the road and in particular by pedestrians and cyclists using the east-west access route along Woodcote/Brookers Lane.*
- 12.46 Although, as set out above, the Council and the appellant are at odds about the sufficiency of the proposed pedestrian connectivity from the appeal sites to the new and existing communities in Bridgemary and/or HA2 – including access to schools, shops and other community facilities within those areas – I maintain that the relationship and integration would be successfully achieved.
- 12.47 Although the preceding discussion on criterion ii is focused on Bridgemary (Peel Common is not directly affected by this criterion since it does not have a settlement boundary in planning policy), it is worth making a comment about the relationship between the appeal sites and Peel Common.

12.48 Whilst the LPA refers to Peel Common as a settlement, it should be stressed that it is not a village defined within a settlement boundary, but rather a linear group of dwellings which have been developed off Newgate Lane over a period of time. It contains no services or facilities with the exception of the Evangelical church, and no discernible 'centre'.

12.49 The proposed developments will deliver a significant area of public open space fronting Newgate Lane, including a children's play area, which will present a significant social and environmental benefit to the community, and ensure that the visual amenity of existing dwellings is well protected. The delivery of this new focal point for the Peel Common area will help the new development integrate with the existing community.

iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimize any adverse impact on the Countryside and, if relevant, the Strategic Gaps

12.50 The proposal is cognisant of its urban edge location, having regard to the character of the neighboring countryside/strategic gap and the adjacent settlement of Bridgemary (this being the 'neighbouring settlement' in question).

12.51 The planning application documents explain how these considerations were robustly addressed in the development of the design. The Landscape and Visual Impact Assessments explains how the form, scale and design of the Illustrative Masterplans have evolved in response to a contextual analysis of the surrounding area. The Design and Access Statements describe the development of the Character Areas Parameter Plan in response to the principle character and features of each edge of the development site. They also describe and illustrate the architectural design cues which will be used to inform the reserved matters design.

12.52 The wording of the criterion is clear that development within such locations is not required to result in no adverse impacts, but that proposals must be sensitively designed to *minimize* any adverse effects which is a lower test. Regardless, in his evidence, Mr James Atkin undertakes an assessment of landscape harm and concludes that the appeal proposals result in no harm to

the integrity of the Strategic Gap and that they do not represent a major incursion into the countryside. Overall, Mr Atkin accepts that an inevitable impact on the landscape will be generated due to the loss of agricultural land to built development, but that given the (medium) magnitude of impact within the study area and its (low to medium) sensitivity, this would represent only a minor to moderate adverse effect (see paragraph 4.48 of Mr Atkin's proof).

12.53 Further discussion is provided under Issue 3 and in the evidence of Mr James Atkin.

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

12.54 The appellants are committed to early delivery of the proposals. Bargate Homes, the appellant for the southern site is a major housebuilder with a track record of delivery of high-quality housing within the authority. Fareham Land LP is an established land promoter who is well placed to enable onward sale and housing delivery.

12.55 During the determination period, the appellants submitted indicative delivery programmes for both sites (combined) to the LPA. Due to the passage of time, this is now updated as follows, as agreed in the supporting letter.

Programme	Timeframe/Numbers
Grant of Outline Planning Permission	February 2021
Submission of Reserved Matters	August 2021
Approval of Reserved Matters	January 2022
Discharge of Conditions	April 2022
Commencement on site	May 2022
Housing Completions	
1 st Unit	January 2023

50 th Unit	January 2024
100 th Unit	January 2025
190 th Unit	January 2026

APPENDIX 7: SUPPORTING LETTER FROM APPELLANTS RE. DELIVERY RATES

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

12.56 The planning applications were accompanied by numerous technical reports which were issued for consultation. A position of 'no objection' has been reached by all of the following subject to conditions/planning obligations:

- Environment Agency (flood risk);
- Lead Local Flood Authority;
- Tree Officer;
- Natural England (ecology);
- Hampshire County Council Ecologist (subject to agreement of chamomile management plan and S.106 to secure use of contributions to Brent Geese and Wader mitigation);
- Environmental Health Officer (odour, noise and contamination);
- County Archaeologist (archaeology and built heritage);
- Historic England;
- Enabling Officer; and
- Hampshire County Council Minerals and Waste team.

-
- 12.57 **I also highlight that no reason for refusal was made in respect of DSP2 'Environmental Impact'** which states that development proposals should not, individually or cumulatively, have a significant adverse impact on neighbouring development or the wider environment in terms of noise, air or other pollutants.
- 12.58 Further consideration of 'amenity' issues such as overlooking, access to outdoor space and sunlight/daylight will be assessed at the reserved matters stage.
- 12.59 Whilst the traffic implications arising from the proposals remain at issue, my evidence at Issue 4, below, together with the evidence of Mr. Anthony Jones, argues that there are no unacceptable impacts arising.
- 12.60 Therefore, I find no conflict with policy DSP40 which is the primary consideration in establishing the spatial strategy and principle of development, and therefore also no conflict with the Development Plan as a whole.

Issue 3 – The landscape character impact of the proposals and the alleged conflict with the Strategic Gap and the character of Peel Common and surrounding Countryside

12.61 The relevant Development Plan policies pertinent to reasons for refusal b) and c) are:

- Policy CS14 'Development on land outside settlements'; and
- Policy CS22 'Development in Strategic Gaps'; and
- Policy DSP40 'Housing Allocations'.

12.62 **Policy CS14 'Development on land 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 agriculture, 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."

12.63 **Policy CS22 'Development in Strategic Gaps'** provides that land within Strategic Gaps will be treated as countryside, and proposals will not be permitted either individually or cumulatively where they significantly affect the integrity of the gap. Strategic Gaps have been identified between Fareham/Stubbington and Western Wards/Whiteley (the Meon gap); and Stubbington/Lee on Solent and Fareham/Gosport.

12.64 **DSP40 'Housing Allocations'** establishes that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional housing sites outside the urban area boundary may be permitted where they meet the specified criteria.

- 12.65 Policy CS14 is clear that development in the countryside must be strictly controlled in order to ensure that there are no adverse impacts to its landscape character, appearance and function. This is consistent with the approach taken in the NPPF. Para. 127 states that planning decisions should ensure developments are sympathetic to local character including landscape character. Para. 170 states that planning decisions should contribute to and enhance the natural and local environment by "recognising the intrinsic character and beauty of the countryside" (inter alia).
- 12.66 However, policy CS14 does not have the effect of imposing a blanket ban on major residential development within the countryside when read as part of the Development Plan as a whole; as set out above, where the Council cannot demonstrate a five-year housing land supply, the provisions of DSP40 become the primary criteria (including landscape impact criteria) against which such development must be assessed.
- 12.67 The applications were both supported by a Landscape and Visual Impact Assessment which provided an assessment of the landscape character of the setting, with reference to the LPA's own landscape character studies. These conclude that the proposals will result in a limited impact at a highly localized level.
- 12.68 This limited impact must be considered in the context of the value of the landscape character of the sites. The appeal sites are not a 'valued landscape' for the purposes of Paragraph 170 of the NPPF, nor are they subject to any national or local landscape designations – both points which are agreed in the Statement of Common Ground. The site is not unique or remarkable for any landscape purposes.
- 12.69 During the negotiations with the LPA thorough the determination period, the LPA has homed in specifically on the alleged impacts in relation to the character of Peel Common as part of the Countryside. It appears to derive its assessment of the character and Peel Common from its alleged isolation, arguing that adjacent development would threaten this by the loss of countryside and creation of a physical link to Bridgemary (depending on HA2).

12.70 In the officer reports, it claims:

"The separate identity of Peel Common (which has been strengthened by the closure of the southern end of Newgate Lane) would effectively be lost as it becomes linked to the expansion of Bridgemary across the gap." (para. 8.51)

12.71 I consider that within such comments, the significance of the landscape character and function of Peel Common has been overstated by the LPA; a matter which is succinctly addressed in the Strategic LVIA (March 2020) submitted with the planning applications:

"Peel Common sits close to the edge of Fareham, connected to the wider settlement edge context by the route of Newgate Lane East and emerging proposals for urban extensions in the remaining pocket of landscape. The current context of Peel Common is relatively indistinct, formed by some wayside and ribbon development along Newgate Lane (potentially dating to ca. early 1900s), but with no overriding or consistent architectural qualities. More notable scale land uses at Peel Common include the solar installation, extensive sports fields to the north and, the sewage treatment works which is strongly enclosed and defined by the mature tree belt that's surrounds it." (Paragraph 3.20)

12.72 Peel Common does not read visually as a distinct, isolated settlement, but rather ribbon development which is seen in the context of other built form including Newgate Lane, Newgate Lane East, Peel Common Sewage Works and Bridgemary peripheries, where such features limit the value of the immediately surrounding 'countryside' landscape (between Peel Common and Bridgemary).

12.73 I therefore conclude that the proposals would not offend the principles of CS14, when read in conjunction with DSP40 and the NPPF, and robustly assessed.

12.74 Turning to policy CS22, the pertinent 'test' set out in policy CS22 is that proposals will not be permitted either individually or cumulatively where they "significantly affect the integrity of the gap". It is therefore not the extent or location of encroachment into the gap which is to be considered alone but the impact on its integrity. In other words, CS22 does not impose a blanket ban

on development in the strategic gaps, but guards against significant adverse effects on its functionality and value.

12.75 Policy CS22 must also be read alongside DSP40 in the absence of a five-year housing land supply. The Strategic Gap test within policy DSP40 (criterion iii) is not that there should be no adverse affects on the gap, but that proposals "*minimise* any adverse impact" through sensitive design; this is a lower test which should also consider the design of the schemes as set out on the parameter plans.

12.76 Notwithstanding, in assessing whether or not the proposals significantly affect the gap's integrity, it is necessary to define the role and purpose of the gap in question, known as the Fareham/Gosport to Stubbington/Lee on Solent Gap (or simply the Fareham – Stubbington Gap). Having regard to the review criteria contained within the policies CS22, the supporting policy text and p.13 of the DSP, I consider the key functions to be as follows:

- Prevention of (physical) coalescence between Fareham/Gosport and Stubbington/Lee on the Solent;
- Retention of visual 'sense' of separation between Fareham/Gosport and Stubbington/Lee on the Solent;
- Retention of the character and identity of the adjacent settlements; and
- Protection of value of green infrastructure.

12.77 Fundamentally, since the appeal sites are located on or close to (depending on whether the proposed HA2 allocation comes forward) the eastern edge of the Strategic Gap (Fareham/Gosport side), their development would still allow a significant physical and visual separation between Fareham/Gosport and Stubbington to be maintained.

12.78 With reference back to the Context Plan at Appendix 1, which I have marked up with arrows below, it can be seen that the effective extension of Gosport as a result of the proposed development would still leave a wider west-east gap between Stubbington and Gosport (blue arrow) than exists between the various settlements across other parts of the Strategic Gap such as between

north Stubbington and SW Fareham (purple arrow). Also, it should be noted that there is less intervisibility between the site and Stubbington due to intervening vegetation and the sewage treatment works compared to the gap at the purple arrow.



12.79 Turning to the other functions identified, as explained above, the proposals would be well related to the Bridgemary/Peel Common area and include a significant belt of open space to the western edge which introduce green infrastructure and a landscape buffer on the more sensitive gap-fronting boundary.

12.80 For these reasons, I find no conflict with policy CS22.

12.81 The earlier iterations of the emerging Local Plan are resoundingly clear that development can be accommodated within the Strategic Gap, since the draft HA2 allocation and the draft SGA both establish that development in the gap is not prohibitive per se. This point is also supported for the support shown to

the Hallam Land and Persimmon planning applications referred to in section 7 above in terms of the principle of developing within the Gap.

12.82 However, as I have argued in representations made to the draft Local Plan Supplement (**Core Document CDF.5**), the evidence base which accompanied the emerging plan lacks robustness and has been applied without justification.

12.83 The supporting evidence is unclear how the LPA selected the sites put forward for allocation/designation and rejected others given the purpose of the gap. For example, the decision to develop the SGA in the western part of the gap seems to ignore the landscape value assessment contained on p.21 the supporting Interim Sustainability Report (**Core Document CDG.9**), which states:

"The [proposed SGA] area is almost completely within LCA 7: Fareham - Stubbington Gap. For all but the south eastern corner of the area the landscape type is open coastal plain and development potential here is moderate given the open, expansive landscape. The introduction of the Stubbington Bypass will impact the rural character of the area introducing activity and noise into the agricultural landscape. Development here is predicted to result in adverse effects to landscape character. Around the sewage works and solar farm in the south-east corner, the landscape is considered to be of lower value on account of the utilities which have completely altered the character of the immediate area, although they are relatively well-screened by wooded bunds and planting."

12.84 The development of the SGA would also see the total coalescence of Fareham and Stubbington.

12.85 As such, the decision to consider HA2 and the SGA is material to the appeals because it highlights the LPA's inconsistent approach to plan making and decision taking with regard to its assessment of the landscape impact of development.

12.86 By contrast, as part of the application documentation, the appellant undertook its own appraisal of the Strategic Gap (report entitled Strategic Landscape and Visual Appraisal, March 2020). The conclusions of this report actually point to

the area of the gap containing our sites to be the least sensitive part of the gap. This is in part due to the influence of the "peri-urban" (to use Mr Atkin's language) influences identified at paragraph 12.68 above and discussed in further detail in Mr Atkin's evidence.

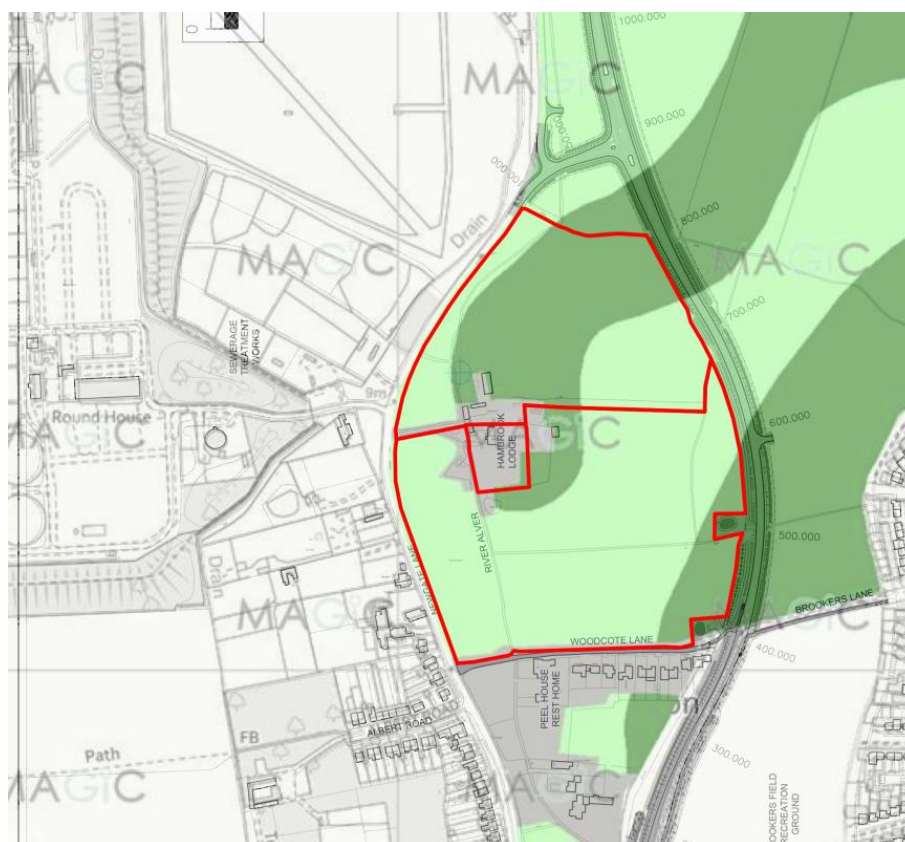
- 12.87 To support the current Regulation 19 draft Local Plan (which now sees HA2 and the Strategic Growth Area removed for consideration), the LPA has commissioned Hampshire County Council to undertake a further study entitled 'Technical Review of Areas of Special Landscape Quality and Strategic Gaps'. In considering the use of minimum separation distances as a tool for considering development within the gap, it describes Peel Common as presenting a 'false' settlement edge to Stubbington. The appellant does not consider Peel Common to be part of the settlement of Stubbington, and indeed sees it as connected with Bridgemary, with the important part of the gap to be preserved lying west of it.
- 12.88 Notwithstanding my conclusion that I find no conflict with CS22, I assert that the weight to be given to CS22 is greatly reduced due to the application of the presumption in favour of sustainable development and the substantial weight to be afforded to the housing land supply shortfall.
- 12.89 Paragraph 11 of the NPPF confirms that the 'presumption' applies where "the *policies which are most important* for determining the application are out-of-date" [Pegasus emphasis].
- 12.90 This is a departure from the 2012 NPPF, which applied the presumption only in respect of "policies for the supply of housing" (Paragraph 49)⁴.
- 12.91 Policy CS22 is an important policy for the determination of this application because it restricts residential development by effectively treating the land in question as countryside for the purposes of preventing coalescence. As such, it is out-of-date for the purposes of paragraph 11.

⁴ In the judgement of the Supreme Court in May 2017 (ref: [2017] UKSC 37 - Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP and another v Cheshire East Borough), the Supreme Court ruled that a 'narrow' definition of this term was confirmed, whereby its meaning was understood to apply only to policies for housing supply rather than those *affecting* it.

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- 12.92 It should also be noted that paras. 171 and 172 of the NPPF are clear that plans should distinguish between the hierarchy of international, national and locally designated sites, with "great weight" given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs which have the *highest status of protection in relation to these issues*. The Strategic Gap does not have this status.
- 12.93 A more detailed review of the landscape matters pertinent to the appeals is found in the evidence of Mr James Atkin.
- 12.94 As a separate point of clarification, I note that the LPA cites conflict policy CS17 'High Quality Design' in the preliminary paragraph of its reasons for refusal. Whilst CS17 does refer to scale, which is established through the parameter plans for these appeals, in my view it is erroneous of the LPA to assert conflict with a design policy for an outline planning application where no clear indication of appearance or architectural character has been confirmed. I am of the opinion that the LPA has conflated its resistance to the principle of development and/or the general visual impact of that development with a resistance to its design (which has yet to be determined). I would therefore respectfully suggest to the Inspector that this policy is not of relevance to the determination of the application.

Issue 4 – Loss of Best and Most Versatile Agricultural Land

12.95 The Planning Statements submitted with the applications included the following map extracted from MagicMap which shows the sites as being a mix of grade 3a (best and most versatile agricultural land) and 3b (not best and most versatile agricultural land). The extract below shows the grade 3a land in dark green and the 3b land in light green.



12.96 Reason for refusal e) relates to the northern site only as it is shown to contain a much higher proportion of grade 3a land, whereas the southern site is predominantly shown to be grade 3b.

12.97 Given that during the determination period, the LPA did not once flag the loss of grade 3a land as a concern, the applicant did not commission further work.

12.98 However, in light of the reason for refusal, Reading Agricultural has been commissioned to undertake a review of the ALC. Whilst it finds the assignment of grade 3a and 3b classifications to be broadly accurate⁵, it concludes that the loss of this land is *not* inconsistent with policy CS16 when considered in the context of Fareham.

APPENDIX 8: AGRICULTURAL LAND REPORT

12.99 Since it is identified that most agricultural land in the borough is of BMV quality, it would not be possible to facilitate significant development without utilising grade 1,2 or 3a land. Indeed, this was recognised by the Inspector in the Portchester appeal (as appended to the Agricultural Land Report) who allowed development across 5.5ha of grade 1 land and the remainder on grade 2 land. In this case, the Inspector noted that the Framework does not place a bar on the development of BMV agricultural land but that, where development would involve the use of BMV land, the economic and other benefits of that land should be taken into account. A similar approach was also taken by the Borough Council and the Local Plan Inspector in allocating land north of Fareham (Welborne Land) for a new community of up to 6000 homes, associated infrastructure and facilities. That site is provisionally mapped as Grade 2, with the detailed ALC survey showing that the development would involve the loss of approximately 211ha of Subgrade 3a land. By contrast, the development at Newgate Lane (North) would involve the loss of 2.1ha of Subgrade 3a land.

12.100 This demonstrates that Policy CS16 cannot be, and has not been applied, in a literal, straightforward manner, when the loss of 1ha of BMV land is acceptable but the loss of 2ha is not; and the loss of a hundred times that amount is found to be compliant with a policy that prevents the loss of any BMV land. Instead, it is a factor to be weighed into the overall planning balance.

⁵ MagicMap uses data from the Ministry of Agriculture, Fisheries and Food (MAFF) to compose its Agricultural Land Classification (ALC) layer, and should be used as a tool only until further assessed by professionals.

12.101 In this case, the weight to be given to the loss of BMV land is very limited, particularly because the grade 3a land only marginally meets the technical criteria for this classification and is split across two fields such that its ability to be managed as a single coherent unit is diminished.

Issue 5 – The highways impact of the proposals and the alleged adverse impact on the local network

12.102 This issue deals with the following reasons for refusal:

- f) Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development [reason e for southern site];*
- g) The proposed access is inadequate to accommodate the development safely [reason f for southern site];*
- 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 [reason g for southern site]);*
- i) The proposed development provides insufficient support for sustainable transport options [reason h for southern site];*

12.103 Extensive negotiations have taken place between the appellant and Hampshire County Council (HCC) Highways during the course of the applications and appeals, which mean that three of the four reasons for refusal cannot be substantiated.

12.104 It will be agreed in the Statement of Common Ground that:

- subject to finalisation of a legal agreement, the proposals will provide the necessary measures to support sustainable travel opportunities;
- subject to technical approval of detailed design, the proposed access arrangements for the two sites are acceptable; and
- sufficient information to adequately assess the highways impacts arising from the proposed development has now been provided.

12.105 Further details on these points of agreement is also provided in a stand-alone Highways Statement of Common Ground between the appellant and HCC.

12.106 The principle issue remaining in dispute therefore is whether or not the proposed off-site junction upgrade works at Newgate Lane/Newgate Lane East are acceptable. The sole option now proposed is the implementation of a signalised junction (traffic lights). This measure will facilitate safer access/egress from Newgate Lane East to Newgate Lane in order to accommodate the increased number of traffic movements associated with the development. It should be noted that the highways impact on other local junctions which have been modelled is accepted by HCC.

12.107 The relevant development plan policy for assessing new development proposals in terms of highways impacts is policy CS5. Part 3 of CS5 states:

"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."*

12.108 The relevant section of the NPPF is paragraph 109 of the NPPF which establishes that:

"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." [Pegasus emphasis]

12.109 The LPA alleges that the proposed Newgate Lane/Newgate Lane East junction upgrade would result in this severe impact on highway safety. The appellant disagrees. Our rationale for supporting the signalised junction option is presented in detail in the evidence of **Mr Anthony Jones, Ms Martha Hoskins, Mr Saumil Patel and Mr Andre Goncalves**, but is summarised below:

- Road Safety Audits have been carried out and do not highlight any

safety issues;

- Modelling has been undertaken and does not highlight any unacceptable delays, waiting times or unsafe queuing patterns;
- Visibility is not compromised; and
- There is nothing inherently dangerous or unsatisfactory about an indicative arrow right turn stage across two lanes of traffic.

12.110 It is agreed in the Statement of Common Ground that the proposal is not in conflict with policy DSP4 'Prejudice to Adjacent Land', which is important in respect of the potential future development of other sites from Newgate Lane East.

12.111 HCC Highways and a number of third-party objectors maintain that the relief road was designed to relieve existing traffic congestion in the area but was never intended to accommodate further development. Whether or not this is the case, the modelling work provided by the appellant has robustly demonstrated that the local highways network can safely absorb the additional traffic movements associated with the proposed development. The Newgate Lane/Newgate Lane East junction improvements proposed by these appeals would not inhibit the ability for further improvements (e.g. a roundabout) and/or separate access points coming forward to enable HA2.

12.112 I would suggest that whilst the relief road may or may not have been intended to cater for new dwellings, it is the fact that it has the capability to do so which should be the determinative factor. There is no planning policy which prevents development coming forward alongside or accessing Newgate Lane East. In circumstances where new housing is so desperately needed, it would be spurious to suggest that the 'newness' of a road makes it sacrosanct from future change or development.

Issue 6 – The ecological impact of the proposals and the alleged adverse impacts on the ecological value of the site

- 12.113 This deals with reason for refusal i) (southern site only) which states that *the proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile.*
- 12.114 It is important to point out there are no other ecological concerns relating to on-site ecology raised. The applications were supported by an Ecological Appraisal, figure 14 of which is the Biodiversity Mitigation Plan which shows the creation of dark corridors, retention/enhancement of GI corridors and location of reptile fencing. Other measures based upon the recommendations of the Ecological Appraisal are to be secured through an Ecological Mitigation Plan, which the parties have agreed in the Statement of Common Ground to condition. The applications were also supported by TVERC Biodiversity Calculators, which demonstrate that despite the loss of cultivated and semi-improved grassland, the introduction of gardens and management of species-rich habitats such as marshy grassland and hedgerows would result in a net biodiversity gain.
- 12.115 Nonetheless, the LPA alleges that the failure to provide an ecological management regime for the chamomile at the outline stage would result in harmful impacts.
- 12.116 During the determination period, the LPA was made aware of the possibility of chamomile on the sites. Ethos Ecology undertook surveys in autumn 2019 which established the presence of chamomile and other plant species which would meet the criteria of a lowland meadow (BAP priority habitat). A full NVC survey was not completed due to the existing use for horse grazing presenting a limitation to this. For the avoidance of doubt, the identification of a BAP priority habitat is not a statutory or non-statutory ecological designation.
- 12.117 The results of the surveys were submitted to the LPA, which showed the species in question present on the western part of the sites only, which is set out on the Open Space Parameter Plan as public open space (i.e. not to be developed for housing). On this basis, and due to restrictions around surveying, the

appellant requested that any further surveys and the detailed management of the relevant area be appropriately conditioned (in the knowledge that clearly it will be retained and managed as open space in order comply with the plans if approved).

- 12.118 As set out in the correspondence at Appendix 9, there is neither any policy or legislative basis for insisting that that detailed survey work or a management regime be submitted upfront, nor in my experience is it common practice.

**APPENDIX 9: CORRESPONDENCE WITH THE LPA ON CHAMOMILE AND
BAP PRIORITY HABITAT**

- 12.119 Policy DSP13 establishes four criteria which all new development must meet:

"i. designated sites and sites of nature conservation value are protected and where appropriate enhanced;

ii. protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;

iii. where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and

iv. The proposal would not prejudice or result in the fragmentation of the biodiversity network."

- 12.120 As stated above, the applications were supported by a suite of ecological information including recommendations for mitigation and enhancement which have been accepted by the LPA, and a biodiversity net gain calculator. The LPA also accepts a suggested condition which requires the submission, approval and implementation of ecological mitigation and management measures in accordance with the principles established in the submitted Ecological Assessment. It is unclear why a further condition could not be similarly imposed to secure the further survey work and management regime required specifically in relation to the chamomile.

- 12.121 Notwithstanding the above comments, since the submission of the appeals, a further chamomile survey was undertaken on 5th August 2020. The results of the survey, along with detailed recommendations for its management, are produced in the Chamomile Management Plan, produced by Mr David West and appended to his proof.
- 12.122 The parties have agreed that the reason for refusal falls away once the Chamomile Management Plan is secured by virtue of a condition requiring compliance with its provisions, as suggested in the Statement of Common Ground.
- 12.123 Accordingly, I do not find any harms in relation to policy DSP13.
- 12.124 During the application period, the applicant was advised by Hampshire Biodiversity Information Centre of the intention of the Hampshire SINC Advisory Panel to pursue the designation of the area of chamomile in question for non-statutory designation as a Site of Importance for Nature Conservation (subject to the necessary consultation processes).

APPENDIX 10: LETTER AND PLAN FROM HBIC

- 12.125 Comments on the proposed SINC are invited until 31st October 2020, with the Advisory Panel sitting to determine the designation thereafter. At the time of writing the area is therefore listed as a 'Candidate SINC'. Policy CS4 affords protection to important habitats in accordance with a hierarchy of designations, where local sites including SINC's fall within the third tier (after sites of international and national importance). However, a Candidate SINC does not fall within this definition.
- 12.126 More detailed evidence in relation to this chamomile issue is presented in the evidence of Mr David West.

Issue 7 – The ecological impact of the proposals and the alleged adverse impacts on SPAs

- 12.127 Policy CS4 and policy DSP15 seek to ensure that sites designated for their nature conservation importance (including ecologically sensitive European sites which have the highest level of protection in the hierarchy) are protected from the adverse effects of development. The appeal sites are not within any designated sites, but are located in proximity to a number of designated sites.
- 12.128 These include the Solent and Southampton Water SPA and Ramsar (approximately 2.3kms south-west) and Portsmouth Harbour SPA and Ramsar (approximately 1.3kms north-east), which also subject the proposals to the HRA process under the Habitats Directive.
- 12.129 The LPA has not formally undertaken an Appropriate Assessment in respect of the proposals.
- 12.130 However, in the first consultation response of the Ecology Officer in relation to the southern application, it identified some Likely Significant Effects (LSEs), noting that it was necessary to proceed to the Appropriate Assessment stage.
- 12.131 The table below summarises the assessment provided by the ecology officer of the identified LSEs, and the subsequent commitment to mitigation measures made by the appellant.

Likely Significant Effect		Mitigation Identified
Loss of SPA supportive habitat		A contribution towards the Solent Waders and Brent Geese Strategy will be secured through a S.106 agreement in accordance with policy DSP14
Increased disturbance	recreational	A contribution towards Solent Recreation Mitigation Strategy will be secured through a S.106 agreement in accordance with policy

DSP15

Hydrological changes from surface water The implementation of a SuDS scheme and a Construction Environmental Management Plan, as secured by condition

Hydrological changes from foul water No mitigation required provided calculations show nitrate neutrality

- 12.132 The ecology officer therefore reaches a conclusion of "no adverse effect on the integrity [of the SPAs]" subject to the appropriate conditions/contributions and outcome of the nitrate calculations.

APPENDIX 11: ECOLOGY OFFICER RESPONSE

- 12.133 The nitrate calculations provided by the appellants were updated in April 2020 in response to the updated Natural England guidance (March 2020) and re-confirm that the proposals would be nitrate neutral and therefore no mitigation is required. The committee reports for both sites reflect the LPA's acceptance of these calculations:

"8.24 The applicant submitted a nitrate budget calculation based on Natural England's methodology dated March 2020. It is noted that this guidance was updated in June 2020, however the changes will not materially affect the previous calculation. It will be for the Planning Inspector to undertake the Appropriate Assessment.

8.25 Officers have considered the current situation in order to be in a position to advise Members on the case that the Council should present to the Planning Inspector.

8.26 *The calculation that the appellant has undertaken is based on an average household size of 2.4 persons in line with the Natural England guidance (March 2020). The appellant's calculation goes on to measure the total nitrogen load from the current land use and then calculates the nitrogen load from future land uses (the proposed development). The appellant's calculation demonstrates that there will be a net decrease in Total Nitrogen output from the site when it is fully occupied and therefore no mitigation is required.*

8.27 *A series of aerial photographs have been submitted to demonstrate that the site has been cultivated for a number of years together with a letter from the farmer confirming that the site has been in crop production since at least 2009. A tenancy agreement has also been submitted, however as the accompanying plan cannot be located, no weight can be attached to this. Officers are satisfied however that sufficient evidence exists to substantiate the inputs used to calculate the existing nitrogen load. As the application is in outline with layout reserved for future determination, any reliance on the illustrative masterplan to identify the amount of open space / SANG, and therefore calculate the nitrogen budget for future uses, must be treated with caution. It would be necessary to ensure that a minimum of 0.58ha of open space / SANG could be secured as part of any reserved matters application in order to conclude that the development would not have a significant adverse effect on the EPS."*

- 12.134 Mr David West of WYG has now produced a "shadow HRA" for each site on behalf of the appellants to support the appeals to assist the Inspector in her/his appropriate assessment, which is appended to his evidence. In addition to the 4 no. LSEs identified above, Mr West's shadow HRA also considers the impact of the proposals on the air quality of the SPAs with reference to two reports, one produced by REC which was commissioned by the appellants, and another produced by Ricardo on behalf of the LPA.
- 12.135 The Shadow HRAs reach a conclusion of no adverse effects on the integrity of the SPAs, therefore meeting the provisions of policies CS4 and DSP15 in this regard.

- 12.136 It should be borne in mind that the presumption still applies where Appropriate Assessment is carried out unless the integrity of the habitats site(s) is found to be adversely affected (Paragraph 177 of the NPPF).
- 12.137 Since the appeals were submitted (but prior to suggested reasons for refusal being devised the applications being heard at committee), Natural England has revised its stance on the confidence which can be placed in financial contributions to the Solent Wader and Brent Goose Strategy, hence the inclusion of reason for refusal j.
- 12.138 The mechanism of pooled contributions for ecological and other mitigation measures is established through the Community Infrastructure Levy (CIL) regime. It is common practice for LPAs to adopt Supplementary Planning Documents or produce guidance documents which justify an appropriate evidenced methodology for calculating contributions towards such items on a per head or per dwelling basis (in this case, details of costs and proposed expenditure are contained within the Solent Wader and Brent Geese Strategy).
- 12.139 In its response dated 31st October 2019 in relation to the southern application Natural England stated on the matter:
- "The application site is situated on a site within the SWBG network, identified as 'low use' for supporting at least 13 lapwing during winter of 2014-2015. The supporting Ecological Assessment (Ethos, Sep 2019) recommends a financial contribution of £35,610 per hectare to be secured via Section 16 agreements, towards the management and enhancement of the network, in line with the Solent Wader and Brent Goose Strategy as prepared by the SWBGS Steering Group. Natural England welcome this, and provided this is appropriately secured with any planning permission, would have no further concerns over this aspect of the application."*
- 12.140 However, Natural England is now placing the onus on developers to explain the link between the contributions to be paid under the SWBG Strategy and how they are spent so it can be assured that mitigation is being implemented.

12.141 In its response dated 3rd June 2020 in relation to the northern application it stated on the matter:

"It is understood both proposals will seek an appropriate level of financial contribution to mitigate their respective partial losses of the Low Use site, in line with the SWBG Strategy... LPAs will be aware of recent CJEU decisions regarding the assessment of elements of a proposal aimed toward mitigating adverse effects on designated sites and the need for certainty that mitigating measures will achieve their aims... [accordingly] it is advised that the appropriate assessments set out further detail that demonstrates a clear link between the impact and the proposed mitigation, i.e. detail of how the financial contributions will be used."

12.142 To response to this requirement, the appellant has identified a piece of open land to the west of Old Street, Stubbington which can be used for mitigation. Bargate Homes has an existing interest in this land. The intention is to reintroduce an agricultural use to this area, comprising a four-year rotation of three years spring barley, followed by a break crop comprising wildflower seeding. This will create suitable overwintering habitat for lapwing and other waders. This strategy is supported in principle by Natural England.

12.143 The delivery of the strategy will be secured through a legal agreement to be signed by the applicants and other relevant parties which will bind the applicants to provide and maintain the land in accordance with the agreed regime. On this basis, we maintain that this reason for refusal can be dropped for consideration, which we will seek to agree in the updated Statement of Common Ground.

12.144 More detailed evidence in relation to this issue is presented in the evidence of Mr David West.

Issue 8 – Planning Obligations

12.145 The reasons for refusal relating to planning obligations are as follows:

- i) The proposed development provides insufficient support for sustainable transport options [reason h for southern site];*
- i) The proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile [southern site only];*
- 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."

12.146 The appellant is currently finalising a unilateral undertaking with the LPA which will deal with items h) (south), i) (north) and k) – o) through the following measures:

- Solent Recreation Mitigation Strategy contribution;
- On-site open space provision and maintenance contribution;
- Education contribution;
- On-site affordable housing delivery;
- Sustainable Travel Measures comprising
 - Bus service improvement contribution;
 - Pedestrian and cycle link between the north and south sites;
 - TOUCAN crossing on Newgate Lane relief road; and
 - Improvements to school walking routes; and
- Implementation of a travel plan.

12.147 The appellant and the LPA are also agreeing a suggested planning condition which deals with reason i) (south) through adherence to an appropriate chamomile management plan.

12.148 Finally, the appellant is also entering into a legal agreement with the relevant parties to secure the manner in which its required financial contribution will be employed its off-site mitigation for the loss of a low use Solent Wader and Brent Geese site.

12.149 Therefore, I maintain that all the reasons for refusal h/i) to o) are adequately addressed by legal agreement and condition, and would be wholly compliant with the tests of section 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The provisions of policies CS21 and CS22 are therefore

met.

Issue 9 - The benefits of the proposals

12.150 The NPPF explains that there are three dimensions to sustainable development, and these are:

- Economic;
- Social; and
- Environmental.

12.151 Whilst it is important to recognise that these three dimensions are not a checklist, they do provide a useful tool in contemplating the breadth of sustainability considerations to be weighed in the planning balance. I consider that the appeal proposals reflect all three dimensions and thus represent sustainable development. As explained below the proposals will secure significant benefits which must be weighed in the planning balance.

Economic

12.152 In respect of economic matters, Pegasus Group produced separate Economic Benefits Statements as appendices to the Planning Statements submitted in support of the applications (now reproduced as **Appendix 12**). They quantify the benefits that would be created by the schemes including:

- Construction employment opportunities;
- Contribution of the construction phase to economic output;
- Household expenditure associated with residents of the new dwellings; and
- Economically active people in employment attracted to live in the new dwellings.

APPENDIX 12: PEGASUS GROUP ECONOMIC BENEFITS STATEMENTS

- 12.153 Taken together, the proposals would result in approximately 235 economically active new residents once fully occupied, of which around 46% are expected to be employed in higher value occupations. The households are estimated to generate expenditure in the region of £6.4million per annum, of which a significant proportion will represent local spending.
- 12.154 Taken together, the appeal proposals could support an estimated 191 jobs during the three-year build programme, taking into account on-site roles and indirect and induced effects, and could generate an additional £33.8million of gross value added for the regional economy during this period.
- 12.155 Construction workers are reliant upon a constant stream of new sites to keep them employed and levels of certainty to encourage construction companies to employ new workers.
- 12.156 Following the recession, the government placed significant importance on the construction industry to kick start the economy. There has been clear emphasis on planning for growth through national policy initiatives including the NPPF which was intended to stimulate the economy.
- 12.157 The decline in the economy resulting from the current coronavirus pandemic is likely to rely equally on the construction and development industries to ignite growth and confidence. Measures have already been put in place to temporarily extend construction site working hours to speed up the delivery of new homes, and the government has recently announced measures to scrap stamp duty on all eligible house purchases up to £500,000 which will help buyers to facilitate their purchase. The role of the proposals in helping to support the development industry in the pandemic should be given significant weight.

Social

- 12.158 The development will provide a mix of housing types and sizes, meeting the needs of the local population.
- 12.159 Substantial weight must be given to the provision of housing both per se and in the light of the authority's current housing land supply, and the extent of the undersupply.

12.160 My assertion that substantial weight should be given to the provision of housing in light of the significant housing land supply shortfall identified by the appellant is endorsed by the approach applied elsewhere by the Secretary of State. For example:

- In an appeal made by Gladman for a development of some 200 new dwellings in Colchester, the Secretary of State (in his direction of 7th April 2020) considered that the provision of housing represents a "substantial benefit" in the context of a 4.7 year supply (para. 20, see **Core Document CDJ.15**);
- The 4.33 year supply identified in the appeal of Robert Hitchins in Ashchurch, was determined to represent a "serious housing shortfall" which was afforded "substantial weight" by the Secretary of State (January 2020) (paras. 16 and 28 of DL, see **Core Document CDJ.16**);
- Notwithstanding that the LPA (London Borough of Tower Hamlets) could demonstrate a five-year housing land supply, the Secretary of State still afforded the provision of housing and affordable housing "substantial weight" in favour of the proposals at Westferry Road (January 2020) (para. 34, see **Core Document CDJ.17**);
- In the appeal by Wates Developments against Hart District Council at Pale Lane Farm, Fleet, notwithstanding that the LPA could demonstrate up to a 9.2 year land supply, the Secretary of State still afforded the provision of housing "significant weight" (para.16, see **Core Document CDJ.18**).

12.161 It would therefore appear entirely unreasonable for the Council to afford anything less than substantial weight to the provision of housing.

12.162 Substantial weight must also be given to the provision of affordable housing in light of the chronic historic under-delivery identified in Mr Neil Tiley's evidence. In accordance with Core Strategy policy CS18, the development will provide 40% on-site affordable housing with no public subsidy to be secured in perpetuity through a Section 106 Agreement. This would constitute a

significant benefit in terms of paragraph 11 of the NPPF.

- 12.163 Additional dwellings, provided within a sustainable location, mean flexibility and choice for the market which will help the delivery of 'significantly boosting' housing in this District. It should be noted that if housing needs are not met then house prices will continue to rise and problems with affordability will increase. It must be recognised that the sales proceeds from the open market housing will help subsidise the delivery for the affordable housing element of the scheme. This is especially pertinent in Fareham, where a set out in the evidence of Mr Neil Tiley, the affordability of housing in Fareham is worse than the government defines as 'acceptable', with house prices being on average a staggering 9.24 times the household income.
- 12.164 The proposals also include a significant area of public open space and children's play areas which provide places for recreation, play and walking, and help contribute towards wider Development Plan objectives to support healthy communities; this should be afforded substantial weight.

Environmental

- 12.165 In terms of the environmental role, the development of greenfield land will typically have some adverse impacts, no matter how sustainably located that site is.
- 12.166 In this case, the proposals will result in a small loss of BMV land, however, this has been assessed as carrying very minor weight.
- 12.167 Although it is agreed in the Statement of Common Ground that the sites are not subject to any landscape designation, we nonetheless accept that there is a minor adverse impact identified as a result of the visual impact of development on greenfield land. The integrity of the Strategic Gap, however, is not affected, and therefore a neutral impact is identified on this matter.
- 12.168 The site has been the subject of extensive ecological surveys and the key ecological features, primarily important hedgerows and trees, are proposed to be retained. The development will introduce significant areas of public open space alongside open water features that serve as part of the sustainable drainage system.

- 12.169 The appellants have committed to enhancement measures including the creation of swales and wildflower meadows, log piles, the retention of darkened corridors and the installation of bat and bird boxes, and have submitted a Net Gain biodiversity calculator with the planning applications to demonstrate that an overall net positive effect will be achieved. A Chamomile Management Plan has also been prepared in respect of the Candidate SINC area. These improvements will result in a moderate ecological benefit to the site.
- 12.170 In terms of the effect on designated sites, the Shadow HRAs have shown the proposals to result in no adverse effects which would weigh as neutral in the planning balance. The proposals will not adversely impact upon local hydrology or air quality, and mitigation payments will be secured in respect of the potential impacts on Solent Brent Geese and Waders and increased recreational use.
- 12.171 The dwellings will be designed to reduce overall energy and carbon dioxide emissions by reducing energy consumption through design, orientation, lighting, heating requirements and air tightness, including low energy appliances and heating systems.
- 12.172 The appellants have also confirmed their commitment (as set out in the Statement of Common Ground) to the following measures to be secured by condition:
- Provision of at least 1 electric vehicle (EV) rapid charge point per 10 residential dwellings; and
 - All dwellings to be designed with water efficiency measures to seek to meet the government's optional standards requirement of no more than 110 litres per person per day usage.
- 12.173 Such design measures would result in minor environmental benefits.

13.0 Planning Balance

13.1 One of the fundamental objectives of the NPPF is to boost the supply of housing as part of the 'golden thread' of the presumption in favour of sustainable development.

The Tilted Balance

13.2 The NPPF test provides that in the absence of a five year housing land supply/failure to meet the Housing Delivery Test, planning permission should be granted without delay unless 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".

13.3 The planning assessment provided above is now summarised with regard to this test, and in respect of the social, economic and environmental dimensions of sustainability.

Economic

- Increased local spending Significant Benefit
- Construction jobs and related industries Significant Benefit
- Role of housebuilding in supporting the post-Brexit and post-COVID economy Significant Benefit

Social

- Provision of new housing in light of current housing land supply position Substantial Benefit
- Provision of affordable housing Substantial Benefit
- On-Site Open space Substantial Benefit

Environmental

- On-site Mitigation and enhancement Moderate Benefit
- Commitment to sustainable design Minor Benefit
- Effect on the SPAs Neutral
- Impact on the Strategic Gap Neutral
- Landscape Impact Minor adverse impact
- Loss of agricultural land Very minor adverse impact

13.4 The three dimensions of sustainable development have been assessed and it is concluded that not only do the adverse impacts not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, but the benefits significantly outweigh any harm and would amount to sustainable development.

Compliance with the Development Plan

13.5 Notwithstanding the application of the tilted balance described above, it must be highlighted that in the situation where a five-year housing land supply cannot be demonstrated, policy DSP40 is engaged.

13.6 Whilst it is accepted that policies CS14 and DSP6 direct development to within the settlement boundaries and outside the strategic gaps, DSP40 establishes that development will be permitted outside these limits where there is no five-year housing land supply and where the relevant criteria are met.

13.7 Section 11 above demonstrates that the tests of DSP40 are met because the proposal is:

- i) relative in scale to the five-year housing land supply shortfall;
- ii) well located and integrated with the neighbouring settlement;

iii) 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) deliverable in the short term; and

v) all environmental, amenity and traffic implications are robustly addressed.

13.8 In the balancing exercise the urbanising effect of development of a greenfield site is therefore weighed against policy DSP40, and having met all the criteria described above we conclude that the proposal represents well designed, integrated sustainable development which can bring forward up to 190 new homes within 5 years.

13.9 Similarly, DSP40 is also the relevant policy when it comes to assessing the impact of the proposals on the Strategic Gap, because in the absence of a five-year housing land supply the weight to be given to policy CS22 is reduced and DSP40 becomes the operative policy.

13.10 Whereas CS22 allows development within the Strategic Gap where it does not adversely affect the integrity of the gap criterion iii) of DSP40 accepts in principle the possibility of adverse impacts, so long as the proposal is sensitively designed to minimise any impacts.

13.11 Whilst we maintain that the proposals have a neutral effect (i.e. no adverse impact) on the integrity of the Strategic Gap (and would therefore meet the provisions of either policy), it is the lower test of DSP40 which is the relevant threshold.

13.12 Notwithstanding, it is germane that permissions granted by Fareham Borough Council indicate that full compliance with the criteria of DSP40 is not a pre-requisite. For instance, at Funtley (Appendix 6), where the site is acknowledged to present conflict with the locational Criterion (ii) (second para, P102 of Appendices) due to its lack of adjacency and poor accessibility, officers nonetheless conclude in the round that DSP40 is satisfied in respect of all criteria.

- 13.13 A further recent example is attached at **Appendix 14**, the Committee report for application P/18/0592/OA at Egmont Nurseries, Brook Avenue, approved by Fareham Borough Council on 1 October 2020. In that report, recommending approval, it is concludes that:

"Officers have however found there to be some conflict with the second test at Policy DSP40(ii) since the site is acknowledged to be in a sustainable location but is not adjacent to the existing urban area... (Para. 8.81)... The scheme is considered to satisfy four of the five criteria and in the circumstances, officers consider that more weight should be given to this policy than CS14 such that, on balance, when considered against the development plan as a whole, the scheme should be approved."

APPENDIX 14: EGMONT NURSERIES COMMITTEE REPORT

- 13.14 Such an approach is consistent with the principle that the Development Plan must of course be read as a whole, and that if proposals are in general conformity then they are liable to be approved in accordance with Paragraph 11(c) of the Framework.

Weight to be Given to DSP40⁶

- 13.15 While it is a matter of common ground that DSP40 becomes the operative policy in place of CS22 in the absence of a five-year housing land supply, it is also by extension one of the 'most important' policies for determining an application as it similarly seeks to direct and control the delivery of new housing.
- 13.16 It is agreed by both parties that the 'tilted balance' is engaged in this instance; that this is not prevented by the restrictions of Paragraph 11(d)(i) or (ii). As indicated by footnote 7 of the Framework, therefore, DSP40 is out-of-date and its weight correspondingly diminished regardless of its becoming the operative policy over CS22.

⁶ The context for this evidence is the Inspector's email dated 06 January 2021, in which clarification on the appellants' position in this matter is sought through an updated proof.

13.17 This approach is ably supported by the appeal decision at Burridge (ref. APP/A1720/W/18/3209865, core document ref. CDJ.2) in which the Inspector concludes *inter alia*:

"By virtue of footnote 7 of the Framework, the failure of the Council to demonstrate the requisite housing land supply renders out-of-date those policies which influence the location and distribution of new housing. This includes CS Policies CS2, CS6 and CS14, LP2 Policies DSP6 and DSP40 and the settlement boundaries upon which these policies rely. I have therefore attached limited weight to the conflict with development plan policy regarding housing in the countryside"

13.18 Notably, in the earlier decision at Portchester (ref. APP/A1720/W/19/3230015, document ref. CDJ.1) the Inspector does not speculate on whether the tilted balance is engaged nor on the weight to be given to DSP40, indicating that the conflict with DSP40 should be given 'great weight'. However, in that example, despite a lack of housing land supply, the tilted balance would not have been engaged owing to the scheme's offence to heritage assets that would have invoked the exceptions detailed at footnote 6 of the Framework.

13.19 The Council indicates variously in Mrs Parker's proof (Paras 7.23, 14.38) that DSP40 should be afforded 'full and very substantial' weight in the event that the tilted balance is engaged and CS22 also falls away (DSP40 having only 'very significant' weight if the tilted balance is not engaged due to protected habitats) (Para 14.36 of Mrs Parker's proof).

13.20 Notwithstanding the primacy of the Development Plan in decision-making, the Framework is a significant material consideration providing unequivocal direction on the treatment of housing delivery policies including DSP40 in circumstances such as those of these appeals.

13.21 In the light of the Framework and the aforementioned appeal decisions, it is my view that, as a 'most important' policy that is now unmistakably out-of-date, DSP40 must be awarded substantially reduced weight commensurate with the significant shortfall in housing land supply in this instance.

13.22 As the appellants' position is that there is a substantial deficit in housing land

supply, DSP40 should itself be ascribed only limited weight. Even if the Council's position of 3.9 years' supply were accepted, DSP40 would then command, at most, moderate weight.

13.23 Accordingly, and without prejudice, any conflict identified in respect of the criteria of DSP40 must be afforded, at most, limited weight in the planning balance.

14.0 Summary and Conclusions

- 14.1 This Proof of Evidence has been produced to assist the Inspector in his consideration of the planning issues arising in the appeals at Land at Newgate Lane, North and Land at Newgate Lane, South for the proposed development of up to 190 dwellings.
- 14.2 The appeal sites are located outside of the settlement boundary and within the countryside. Fareham Borough Council is currently unable to demonstrate a five-year supply of land for housing, such that under the provisions of the NPPF, the tilted balance applies and the relevant policies for the delivery of housing are out-of-date. In this situation policy DSP40 becomes the operative policy for assessing the principle of development, and my evidence has clearly established that its provisions have been met.
- 14.3 Even were some limited conflict with policy DSP40 to be identified, both the policy and the Development Plan must be read as a whole. There is no firm basis to suggest that such conflict would inevitably direct refusal based on a reading of the Development Plan, which must also be considered against other material considerations including, *inter alia*, the contribution of new housing in an authority that has a consistent track record of under delivery of housing and the failure to demonstrate a housing land supply for many years.
- 14.4 As policy DSP40 is a 'most important' policy, once the tilted balance is engaged the weight to be afforded to the policy – and any identified conflict with it – must be correspondingly reduced. The degree to which weight is reduced is a matter for the decision-maker but will be informed by factors including the extent of the housing supply shortfall.
- 14.5 With regards to landscape impact, my evidence, as supported by the evidence of Mr James Atkin, confirms that the proposals do not offend the provisions of policy CS22 (Strategic Gaps), albeit the weight to be given to CS22 should be limited in any event.

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- 14.6 In consideration of the other main matters which relate to highways, loss of agricultural land and ecology, my evidence has concluded that all relevant technical policies of the development plan have been complied with, and that the necessary agreements and conditions are being put in place to secure any necessary obligations. Obligations are also being secured for contributions in relation to affordable housing, recreational and education infrastructure.
- 14.7 The benefits of the appeal proposals span all dimensions of sustainable development, but are most significantly felt in terms of the social/economic benefits relating to the delivery of new housing and affordable housing where a shortfall has been identified and where new development is critical to supporting the economy through COVID.
- 14.8 My overall balancing exercise concludes that not only do the adverse impacts of the proposals not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, but that the benefits significantly outweigh any harm.
- 14.9 I therefore respectfully request that the appeals be allowed, subject to imposition of suitably worded conditions.