

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
‘APPEAL A’: LAND AT NEWGATE LANE EAST (NORTH)
‘APPEAL B’: LAND AT NEWGATE LANE EAST (SOUTH)**

**OPENING SUBMISSIONS
ON BEHALF OF
THE APPELLANTS**

1. These Opening Submissions are made behalf of the Appellants in respect of two conjoined appeals for residential development on adjacent parcels of land (75 dwellings on Appeal A ‘North’; 115 dwellings on Appeal B: ‘South’) off Newgate Lane East in Fareham, Hampshire. Together they will provide some 190 homes (including 40% affordable housing) in the context of an acknowledged shortfall in the Fareham Borough 5 year housing land supply.

2. In the light of the reasons for refusal and evidence submitted, in his pre-inquiry note, the Inspector identified eight Main Issues:
 - (1) The effect of the proposals on the spatial development strategy of the area;
 - (2) The effect on the character and appearance of the area with particular reference to the countryside and the gap between settlements;
 - (3) The effect on the safety and convenience of highway users;
 - (4) The effect on European Protected Sites and the biodiversity of the appeal sites;
 - (5) The effect on best and most versatile agricultural land;
 - (6) Whether the proposals make adequate provision for infrastructure;

(7) Whether it would amount to sustainable development under the terms of local and national policy.

3. Of these, the question of infrastructure provision has been satisfied by the appropriately worded s. 106 obligations now agreed (albeit unilateral). Similarly, the impact on European sites has been agreed to be mitigated through off-site measures now secured, and the on-site biodiversity objection (chamomile on the South site) has been overcome by a management plan. Agricultural land quality is a matter which the local planning authority weigh as a negative but would not justify the withholding of planning permission.
4. It is anticipated, therefore, that the inquiry time will be taken up mostly with considering Main Issues (1) spatial strategy; (2) landscape and gap; (3) highway safety and capacity and (4) housing land supply; Main Issue (5) sustainable development will be the product of the consideration of issues 1-4 and the obvious benefits, socially and economically, of the provision of 190 much-needed market and affordable dwellings. For convenience of analysis, I take them slightly out of order:

Main Issue (4): housing land supply

5. There is now no dispute that the Council cannot demonstrate the necessary 5 year housing land supply. As such, para. 11(d) of the NPPF is engaged by Footnote 7, 'the most important policies' are deemed out of date and the operation of the 'tilted balance' in para 11(d)(ii) is brought into effect.
6. The actual shortfall is a matter of dispute, but the Council and Appellants agree that whichever party is closest in their assessment, the shortfall remains material and the 'most important' policies, now deemed 'out-of-date', are to have their weight reduced accordingly. Thus, breach of policies seeking as a matter of principle to prevent development in the countryside or in the strategic gap, in particular, is to be accorded reduced weight and permission is to be granted unless the '*adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole*'.
7. The absence of a 5 year housing land supply also triggers the operation of development plan policy DSP40, which itself provides an exception to the

countryside/gap constraining policies, by encouraging development outside settlement boundaries, subject to its own criteria.

8. The Appellant will argue, on the evidence, that each of the criteria in DSP40 is met, and for that reason the proposals accord with DSP40. Given that DSP40 is itself an exception policy, that means that the proposals accord with the development plan ‘taken as a whole’¹. In that context, it is para. 11(c) of the NPPF which is engaged and permission should be granted ‘without delay’.
9. However, as is apparent, DSP40 is itself a ‘most important policy for determining the applications’ (one might say it is *the* most important one), so para. 11(d) operates to render it ‘out of date’ – in short, its criteria are not apparently sufficiently flexible (or being sufficiently flexibly applied) to allow for the establishment of a 5 year housing land supply. As such, if there is a breach of any individual criterion (which is not at all accepted), that breach should similarly be accorded reduced weight in the planning balance under para. 11(d)(ii).
10. 190 dwellings, with 40% as affordable, will make a real and meaningful contribution to a long standing and woeful housing shortfall, providing real homes for real families. That is a benefit to be accorded substantial weight.
11. The LPA pins its hopes on a future improvement in supply rendered uncertain and increasingly distant by both its continued reliance on ‘jam tomorrow’ from Welborne, and by having taken the gamble with its Regulation 19 emerging Local Plan that it could bank on its housing requirement being *reduced*. The Council lost that gamble and must now find (at least) the numbers originally set out in the Reg 18 plan.
12. None of that changes the support to be given to these appeals proposing housing here and now, in the face of a current and continuing shortfall. Bargate Homes has contractual control of both the North and South sites and, being owned by Vivid, one of the largest affordable housing providers in the south of England, has no need of bank funding and will be able to proceed to build out as soon as conditions are discharged. Not only would Vivid deliver the much-needed affordable housing,

¹ *R v Rochdale MBC, ex parte Milne*; per Sulivan J.

Bargate's commercial profits are re-invested by Vivid in their wider affordable housing programme.

Main Issue (1): Effect on the spatial strategy of the area:

13. The site is sustainably located by reference to accessibility by non-car means. The County Council Highway Authority, subject to certain infrastructure improvements, do not object on accessibility or sustainability grounds. They are right not to do so².
14. The site lies outside the adopted settlement boundaries and in a (currently) adopted gap. But these policies of restraint are not delivering and cannot deliver the present and future development needs of the Borough. Unsurprisingly, therefore, both are under review and will be replaced by the emerging local plan. Indeed, the Reg 18 (sensibly) proposed to replace the gap notation, identify a large housing allocation to the east of Newgate Lane East and further identify an area of search to the west for a 'strategic growth area'. As such, it cannot be said that this is a location in-principle contrary to any up -o-date spatial strategy.
15. As just noted, Fareham took what might be considered a foolhardy (though doubtless politically popular) decision to anticipate that changes in government policy would *reduce* the numerical housing policy requirement (not to be confused with the on-going housing need and worsening affordability ratios in the Borough), and produced a Reg 19 version that cut back on the position of the Reg. 18 version. Miss Parker's case in November/December was predicated on the Reg 19 reviving the gap notation and deleting the allocations and SGA.
16. In January, the Council lost that gamble and has now wasted its Reg 19 consultation stage on a preferred strategy that cannot deliver the required housing numbers. Given the findings of the SEA which accompanied the Reg 18 strategy, the only sensible outcome is to revert to the deletion of the gap and the re-institution of the allocations and SGA removed. To do otherwise would need a re-run SEA to come to a different outcome – itself a worrying prospect for the probity of the system – and all the delay to the formulation and adoption of the local plan as a result. Quite candidly in her

² Miss Parker for the LPA displays her lack of familiarity with transportation matters in the approach she takes to guidance on walk distances, but that is in her enthusiasm to find a breach of the permissive policy DSP40.

Further Rebuttal, Miss Parker has no idea how the Council intends to find the necessary numbers. One suspects neither does the Council.

17. In addition to the above, the *adopted* spatial strategy provides a permissive policy outside settlement boundaries in the form of DSP40. This acts as an exception policy to gap and countryside restraints where, as here, the Council cannot demonstrate a 5 year housing land supply. In those circumstances its criteria become the operative development plan policy tests for permission.
18. As indicated above, DSP40, too, is subject to being rendered out of date by para. 11(d) and Footnote 7 of the NPPF, but in its own terms, it is satisfied, on the Appellants' evidence, by these two proposals. They are well related to the adjoining settlement and cause no unacceptable landscape or highways impacts. As such, the proposals accord with the spatial strategy of the area, which is to permit development in such locations when needed to maintain a 5 year land supply and significantly boost the supply of housing.

Main Issue (2): effect on the landscape and gap:

19. This will be explored in evidence. Until exchange of proofs, the Council had insisted on considering each site as if an 'island' unrelated to the other. It has now been agreed that both sites can be approached as coming together³. In addition, the Council sought to ignore the emerging policy context (although in the light of the to-ings and fro-ings on the emerging local plan allocations, Mr Atkin has considered the development impacts both with and without the adjacent draft allocations).
20. This is, it might be said, a pretty unlovely landscape, certainly not a 'valued' landscape for the purposes of the NPPF, the site being bounded on both sides by roads and influenced by development both adjacent and in the near vicinity. In this flat, degraded peri-urban coastal fringe, it is indicative that the nearest major landscaped area is the visual buffer of the tree belt round the sewage works. The landscape character and visual impacts of the proposals are limited almost exclusively to the sites' near edges.

³ The 'Linked Delivery' SoCG – although the southern site could theoretically come forward alone.

21. As to the separation function of land between settlements, it is apparent from the Appellants' evidence that these two sites could be developed, and all the land up to the borough boundary to their east could be developed, without any functional harm to the separation of the settlements to the west. That is because the site itself lies to the east and south of the existing development (and the aforesaid buffer planting). It plays no role in preserving Stubbington's separate identity.
22. As such – just as the Reg 19 LP recognised no gap function requires this land to be kept undeveloped.

Main Issue (3): highway safety and capacity

23. Evidence will be heard in respect of the use of an indicative arrow for right hand turns on the junction with Newgate Lane and Newgate Lane East. At these flows and at these speeds and in these visibility conditions, it is perfectly commonplace and in accordance with guidance to propose what the Appellants propose. To demand on safety grounds a fully signalised junction to accommodate a minor turning movement is – as the County knew the modelling showed – to defeat the junction on capacity grounds. There is no justification for it. This is not a scheme which should be dismissed on highways safety.
24. Evidence will also be heard on capacity. Here the NPPF test is whether 'the residual cumulative impacts on the road network are severe'⁴. The County were faced with modelling which showed that the proposed junction is predicted to operate within capacity. It could not, therefore, argue that the scheme would have 'severe' impacts.
25. Instead, the County has pointed to the business case made for the Newgate Lane East in January 2015 and claimed that additional delay would negate the benefits it had sought to achieve. It claims that the new road was to benefit other development elsewhere, and this development should not be allowed to 'use up' some of the capacity improvements the road has achieved.

⁴ NPPF, para. 109

26. This is a novel proposition: that a development should not be ‘allowed’ to use the extant road capacity. But when one looks at the evidence, the actual savings promoted in the business case back in January 2015 (southbound PM⁵) are unaffected by the proposals⁶.

27. Taking advantage of the adjournment though unfortunate injury of its Counsel, the County has developed its case by reference to the ‘BCR’ supporting the business case for Newgate Lane East. It did so getting the delay inputs wrong, but even if the additional delay had been properly calculated, the exercise Mr Gammer sought to do remains meaningless as a way of assessing the highways acceptability of a pair of planning applications totalling 190 dwellings. We now have a different witness line-up to defend the County’s point, but the simple fact remains: with the development and its signalisation in place, the road network operates well within capacity. This is not a scheme which should be refused on highways capacity grounds.

Main Issue (8): sustainable development

28. The schemes accord with policy DSP40 and should get the support of para. 11(c) of the NPPF.

29. In the alternative, they get the support of para. 11(d)(ii) of the NPPF in that their many and manifest benefits are not ‘significantly and demonstrably’ outweighed by any harms arising: they

- are acceptable in terms of highways safety and capacity;
- are well related in terms of accessibility;
- have limited impact on best and most versatile agricultural land;
- cause only limited and localised landscape impact; and
- have no material impact on the separate identity of settlements.

30. These appeals are for proposals which amount to sustainable development, within the meaning of the NPPF and should be approved in the public interest.

⁵ Gammer proof 5.5

⁶ Hoskins proof Table 4.3; no additional delay over Forecast Base ‘North to South’ PM Peak.

31. For all of the above reasons, and having heard the testing of the evidence, the Inspector will be urged, respectfully, in due course, to allow both appeals and to grant permission for the development here sought.

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