

Appeal by Fareham Land LP and Bargate Homes Ltd in respect of Land at Newgate Lane North and Newgate Lane South

Planning Inspectorate's References: APP/A1720/W/20/3252180 "the northern Site" (Appeal A) and APP/A1720/W/20/3252185 "the southern Site" (Appeal B)

**Opening Submissions on behalf of
Fareham Borough Council**
(Inquiry commencing 09/02/21)

1. Introduction

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

- 1.2 The reasons for refusal 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 the protection and enhancement of chamomile, which relates to the southern site only. At this stage in the appeal both parties are agreed that the reasons relating to the effect on European Protected Sites and the biodiversity of the appeal sites have been satisfactorily addressed, and the evidence has been provided for you, Inspector to carry out the appropriate assessment.

1.3 It follows that the reasons for refusal give rise to the following core issues which fall for your determination:

- (1) The effect of the proposals on the spatial development strategy for 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 the best and most versatile agricultural land in relation to the northern site; and
- (5) Whether the proposals would amount to sustainable development under the terms of local and national policy.

1.4 It is agreed that:

- (1) The Council cannot demonstrate a 5 year housing land supply and therefore the titled balance in paragraph 11 of the NPPF applies;
- (2) Whilst the parties differ on the precise extent of the current shortfall, the shortfall is material either basis, as such it is unnecessary for you, inspector, to conclude on the extent of the shortfall (Updated statement of Common Ground on Housing Land Supply Matters 22/1/21);
- (3) The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 provides that, where the Council does not have a 5 year housing land supply, additional housing sites, outside of the urban area boundary, may be permitted only where five criteria are met;
- (4) These criteria include the following requirements in respect of any proposed development:
 - “(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 minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps”; and

- “(v) The proposals will not have any unacceptable environmental, amenity or traffic implications.”

1.5 It follows that, Inspector, the development plan provides you with a mechanism by which to determine appeals such as these in circumstances where the Council is unable to demonstrate a 5 year housing land supply.

1.6 This is of central importance because it enables you to reconcile the need to apply the titled balance to appeals where there is a shortfall in housing land supply whilst also recognising the fundamental need to ensure that development should be plan-led. This is inherent in section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 which establish a statutory presumption in favour of the Development Plan. This presumption is re-emphasised in the Framework and was the subject of guidance by the Court of Appeal in *Gladman Developments Limited v Daventry [2016] EWCA Civ 1146*. In respect of a very old development plan Sales L.J. stated at paragraph [40](iv):

“(iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF (2012), at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all.”

1.7 Policy DSP40 has been considered by a series of Inspectors who have emphasised its importance, for example in the Land West of Old Street, Stubbington decision (APP/A1720/W/18/3200409, Appendix 3 to Ms Parker’s January rebuttal), the Inspector noted:

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

- 1.8 This analysis respects the dicta of Lord Carnwath at paragraph [55] of *Suffolk Coastal DC v Hopkins Homes and another* [2017] UKSC 37 (CDK5). The fact that the provisions of DSP40 are breached puts the development squarely at odds with the Council’s development strategy and the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath at [21] the Framework:

“...cannot and does not purport to displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”

- 1.9 The development plan requires that applications such as these, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. It follows that a failure to give this policy anything less than very substantial weight would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme (to use the words of Lord Carnwath above).

2. The Case for the Council

2.1 The evidence will demonstrate, Inspector, that in an attempt to make the submission that the appeal proposals comply with the provisions of the Development Plan, the Appellant is forced into a series of untenable assertions on each of the main issues upon which you have to decide:

- It is suggested that harm to the countryside and strategic gap can be satisfactorily minimised in circumstances where the development proposed will present as isolated pockets of development within the countryside; far from being located adjacent to the settlement boundary and well related and integrated with it as policy requires, it would be some distance away separated by intervening countryside;
- It is suggested that the countryside within which the development would sit is of “low to medium” susceptibility to the development proposed, despite the categorisation of it as “moderate to high” within the recently carried out Fareham Landscape Assessment (2017) (CDG15). It being asserted by the Appellant that the Newgate relief road reduces (rather than increases) susceptibility in the face of the warning in the FLA that: *“Significant further development in addition to the road scheme would almost certainly have this (overwhelming urbanising effect across the area as a whole), potentially tipping the balance towards a predominantly urban character”* (page 153, 4th paragraph) and that there is accordingly a need in this location *“to keep the urban boundaries as tightly drawn as possible”* (page 157, 2nd paragraph);
- It is suggested that the appeal schemes, which propose between them 190 new dwellings representing more than a doubling of the existing settlement at Peel Common, comply with FLA development criteria which emphasise the importance of “maintaining the distinctly “isolated” nature of the settlement at Peel Common” and ensuring that any potential “small-scale infill development” effectively rounds off rather than extending it;

- In relation to the appropriateness in safety terms of a scheme which would result in traffic using an indicative arrow arrangement to cross two lanes of traffic into Old Newgate Lane, it is suggested by the Appellant that such an arrangement is safe in the face of the Appellant's own Road Safety Audit which recommended a separately signalled right turn into Newgate Lane because of the potential for collisions between Northbound vehicles and vehicles turning right into Old Newgate Lane

(1) Conflict with the Development Plan

Sustainable Location and spatial strategy

2.2 Policy DSP40(ii) provides that permission for development outside of the defined development boundaries of settlements will only be granted where a proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries and can be well integrated with the neighbouring settlement.

2.3 The supporting text provides at 5.163-4 (CDE2) that:

“Therefore, further flexibility in the Council's approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets...

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

2.4 Ms Parker will demonstrate that in circumstances where the Council is unable to demonstrate a 5 year housing land supply, the circumstances where market

housing outside of the defined development boundaries of Settlements is permitted are strictly controlled in line with policy DSP40. She will also demonstrate that the proposed development would not provide for sustainable development as required by that policy and that there would therefore be conflict with the spatial strategy and the development plan as a whole.

Impact on the Countryside and Strategic Gap

- 2.5 DSP40(iii) provides that proposals must be sensitively designed to reflect the character of the neighbouring settlement and minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps. Mr Dudley will demonstrate that the proposed development is fundamentally inconsistent with the policy context for this area, in particular the Fareham Landscape Assessment (2017) and the conclusions of the Technical Review of Areas of Special Landscape Quality and Strategic Gaps (CDG7). The development will present as isolated pockets of development unrelated in scale and form either to Peel Common or to Bridgemary.

Impact on the Road Network

- 2.6 DSP40 (v) provides that the proposal will not have any unacceptable traffic implications. Policy CS5 requires (insofar as is relevant) that new development should not adversely affect the safety or operation of the strategic and local road network, public transport operations or pedestrian and cycle routes.
- 2.7 It is common ground that a fully signalised junction option for the Newgate East and Old Newgate Lane junction is not proposed by the Appellant due to the junction operating unacceptably in terms of capacity. Mr Mundy will demonstrate that, in accordance with the Appellant's own road safety audit, the development proposed would be unsafe in the absence of such an option because of the potential for collisions with northbound vehicles.

- 2.8 Furthermore, Mr Whitehead will demonstrate the significance of Newgate Lane East in terms of forming one of three main arterial routes carrying traffic between Fareham and Gosport and the M27. The eastern alignment of Newgate Lane was completed in 2018 to provide “*a wider, higher standard route, with fewer side roads and driveway accesses, allowing traffic to flow more smoothly and providing improvements to journey times and delay reduction.*” The combined scheme cost was £12.2m and was publicly funded. The successful business case for the package included a BCR value of 1.88, which represents a Medium value for money investment within the DfT’s Value for Money framework.
- 2.9 However, for the Signal Junction and Toucan schemes in combination the updated BCR is forecast at approximately 1 and is on the threshold of the low/poor VfM category. The use of an updated BCR gives further context to the significance of any delay forecast. Furthermore, the use of an updated BCR value in considering these applications for planning permission is appropriate for a development scheme that has such a significant impact on the performance and associated value of a recently competed, publicly funded set of highway infrastructure. The revised BCR calculation demonstrates a significant and material impact from the proposed schemes on the existing network which would represent in extensive queuing and delays as set out in the proofs of evidence.

(2) Planning Balance

- 2.10 Ms Parker will demonstrate that the proposed development is in conflict with the Development Plan and fails to comply with policy DSP40 which expressly deals with how an application such as this should be determined. Very significant weight should be afforded to this harm.

2.11 Furthermore, the unacceptable impact on highway safety in terms of paragraph 109 of the NPPF means that the appeal should be dismissed for this reason alone.

David Lintott

Cornerstone Barristers

09/02/21