

Gosport Borough Council; Additional submission regarding the Newgate Lane South Appeals (12th February 2021)

**Appeal by Fareham Land LP (ref APP/A1720/W/20/3252180 / FBC ref P/18/1118/OA)
Land at Newgate Lane (North), Fareham PO14 1BA - 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**

**Appeal by Bargate Homes Ltd (ref APP/A1720/W/20/3252185 / FBC ref P/19/0460/OA)
Land at Newgate Lane (South), Fareham PO14 1AZ - 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**

Further to the opening session on Tuesday 9th February 2021 Gosport Borough Council indicated its intention that we would like to provide a submission updating the position from that set out in our representation submitted in July 2020. This submission dated Friday 12th February 2021 represents this update.

1 Introduction

- 1.1 I can advise that Gosport Borough Council (GBC) wishes to maintain its previously made objections to both planning applications and the Council supports Fareham Borough Council's Planning Committee of 24th June 2020 which resolved to refuse both planning applications (CDC.1 & CDC.2).
- 1.2 This document provides an update to the Council's appeal submission sent to the Planning Inspectorate in July 2020 which I trust the Inspector will find of assistance.
- 1.3 The two applications at Newgate Lane (as set out above) are of strategic importance to Gosport Borough Council and its residents and businesses as well as the communities of Hillhead and Stubbington in Fareham Borough. These are only two of a number of speculative applications received by Fareham Borough Council in the Strategic Gap between Fareham, Gosport, Lee-on-the-Solent and Stubbington and we have updated the plan previously submitted regarding current proposals in the Strategic Gap (Appendix A1).
- 1.4 All of these planning applications are contrary to the adopted Fareham Borough Local Plan due to their location outside of settlement boundaries and being within the Strategic Gap between Fareham, Gosport, Lee-on-the-Solent and Stubbington. Whilst Policy DSP40 of part 2 of the Adopted Fareham Local Plan (CDE.2) does potentially facilitate development in such

locations if a five year housing supply has not been demonstrated it is clear from evidence submitted by Fareham Borough Council that the criteria of this policy has not been met by either of the appeal proposals.

- 1.5 The two Newgate Lane applications have not been tested in combination and cumulatively with other proposals in the Strategic Gap, in relation to their environmental, landscape, transport and infrastructure implications. This is the function of Fareham Borough Council's forthcoming Local Plan and ultimately these matters should be fully considered at the Examination in Public (EiP) as required by the plan-led system in the National Planning Policy Framework.
- 1.6 As highlighted in our earlier representation Gosport Borough Council identified specific concerns to these two appeal proposals as well as considerable objections with regard to the in-combination impact on:
- the significant erosion of the long-established function of the Strategic Gap which aims to prevent coalescence and maintain the setting of each individual settlement; and
 - the effectiveness of the existing and proposed forthcoming road infrastructure which operates as a strategic transport corridor through the Strategic Gap serving the Gosport Peninsula.
- 1.7 These points are made in detail in our previous submissions and are not repeated here.

2.0 Fareham Local Plan 2037 (Publication version) (Regulation 19)¹ (CDF.6)

- 2.1 Since the Council's submission to the Inspectorate regarding these appeals in July 2020, Fareham Borough Council has produced its Publication version of the Fareham Local Plan 2037 (Regulation 19) (FLP 2037) which has been subject to consultation.
- 2.2 This draft Plan includes a significant change from the previous informal Regulation 18 consultations (CDF.1, CDF.2 & CDF.4) in that the proposed allocation of up to 475 dwellings on the east side of Newgate Lane East and adjacent to the Gosport Borough boundary has been withdrawn. This allocation was often referred to as HA2.
- 2.3 The Plan also removed proposals for a strategic growth area within the Strategic Gap. Instead the existing Strategic Gap boundaries as included in the adopted Fareham Local Plan between Fareham, Gosport and Stubbington are now shown in the latest version of the Local Plan.

¹ https://www.fareham.gov.uk/PDF/planning/publicationplan/Publication_plan_FINAL.pdf

- 2.4 Consequently this leaves the two appeal sites at Newgate Lane under consideration at this inquiry isolated from any settlement large enough to have a settlement boundary. The proximity of the two Newgate Lane proposals to the former HA2 allocation was originally cited by the applicant as one of the primary reasons for the justification of the sizeable development in this location.
- 2.5 This change to the FLP2037 confirms the current position set out in the adopted Local Plan and therefore reinforces that the two Newgate Lane application sites are 'outliers' isolated from any settlement boundary within or outside Fareham Borough. This is clearly contrary to the adopted Fareham Local Plan including those set out as exceptional arrangements in Policy DSP40 which enables development outside the urban boundary if it can be demonstrated that there is no five year housing supply.
- 2.6 In this case the exceptional criterion ii) requires 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. It is clear that given these sites 'outlier' status they are not located adjacent to, or well related to the existing urban boundaries of Stubbington nor Fareham as defined in the Fareham Local Plan. Nor will it be sustainably located to, or adjacent to Gosport's Urban Area Boundary as defined by the adopted Gosport Borough Local Plan 2011-2029 (CDE8 & CDE9) which is outside the remit of Policy DSP40 and therefore it can be argued is not covered by the Fareham Local Plan. It would therefore follow the only two settlement boundaries which are covered by DSP40 in this instance are those of Stubbington and Fareham. It is clear that the proposals, whether taken individually or together, do not relate well to either of these settlement boundaries.
- 2.7 That said if a wider interpretation of Policy DSP40 is taken which includes settlement boundaries outside of the Fareham Local Plan area which have not been defined by Fareham Borough Council it is clear that the appeal sites do not relate well to Gosport given their isolated position beyond the arable fields and Newgate Lane East. The evidence provided by Fareham Borough Council on this matter demonstrates this position.
- 2.8 Similarly the proposed developments are not sensitively designed to reflect the character of the neighbouring hamlet given the small size of the ribbon settlement of Peel Common which does not have its own settlement boundary in the Adopted Fareham Local Plan; nor do the proposals minimise the adverse impact on the countryside and the Strategic Gap as highlighted by Fareham Borough Council's submitted evidence.

- 2.9 In the light of this it is considered important to update the Inspector on Gosport Borough Council's position regarding Fareham Borough Council's latest Local Plan consultation. Importantly, though Gosport Borough Council still holds the view that limited weight should be given to an emerging plan where proposals are controversial, it does recognise that Fareham Borough Council has reached a further stage since our earlier comments in July as the Local Plan is now at the Regulation 19 stage as opposed to the Regulation 18 stage.
- 2.10 For the Inspector's information Gosport Borough Council is supporting FBC's position on the Strategic Gap including the withdrawal of the HA2 allocation and the confirmation of the existing Strategic Gap boundaries between Fareham, Gosport and Stubbington. The Council's representation to Fareham Borough Council on this matter is attached in Appendix A2 for completeness.
- 2.11 The Council also recognises that since the publication of the FLP2037 the Government has confirmed its latest Standard Method for determining local authority housing requirements. It is clear that the housing requirement for Fareham Borough as set out in the latest Standard Method is higher than the figures set out in the Regulation 19 FLP2037. Consequently it is likely that Fareham Borough Council will need to revisit its proposals prior to its submission of the Local Plan for examination purposes.
- 2.12 However it is important to acknowledge that it is not a forgone conclusion that HA2 will necessarily be re-instated into a subsequent Regulation 19 Local Plan. Moreover if it were, due to the controversial nature of such allocations in the emerging Local Plan, no weight should be given to such proposals at this time.
- 2.13 Whether or not HA2 is included in a further version of the FLP2037 such a proposal would need further consultation and be subject to an Examination in Public. **This ultimately reflects Gosport Borough Council's overall position in that all the numerous speculative planning applications including the Newgate Lane North and South proposals and any additional allocations included in any subsequent version of the FLP2037 will need to be assessed alone and in combination at an Examination in Public in order to fully consider the environmental, landscape, transport and infrastructure implications together. Only this way can planning decisions and strategy reflect the NPPF's requirement for the planning system to be genuinely plan-led.**
- 2.14 Planning decisions in the Strategic Gap also need to be considered in conjunction with their wider impact on the Gosport Peninsula which contains

significant brownfield development and regeneration proposals and opportunities and which will be served by the same limited road network to, and from, the Peninsula. Given the limited transport choice in Gosport Borough and the traditionally high level of car usage in Fareham Borough with 71% of Fareham residents travelling to work by car or van (in pre-Covid times) it is unlikely that the proposals at Newgate Lane will represent any significant modal shift and therefore will be very car dependent. Fareham Borough car and van commuting rate is the second highest in Hampshire and the 35th highest (out of 348) of all local authorities².

- 2.15 It appears from evidence presented by Fareham Borough Council that these proposals on their own will undermine the effectiveness of the significant new public investment at Newgate Lane East and the Peel Common Roundabout but much more importantly when taken with other speculative developments in the area will have a detrimental impact on accessibility to Gosport Borough. It would seem that the only option is that all these proposed Strategic Gap proposals need to be considered as a whole to ascertain whether any significant strategic transport mitigation can be secured and that this should be aiming to deliver a noticeable change in modal shift towards public transport and active travel methods.

3.0 A potential case for prematurity

- 3.1 The Council recognises that Paragraphs 48-50 of the NPPF set out the weight that can be given to an emerging Local Plan and its policies. Paragraph 48 states:

Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

- 3.2 In the light of Paragraph 48 the Council considers that even though it is supporting Fareham Borough Council's position on the Strategic Gap and the fact that HA2 has been withdrawn it still follows that limited weight should be given to the emerging Local Plan due to the level of objections received to the Plan. Consequently the presence or absence of the HA2 allocation

² Figures from *Main Method of Travel to Work in the Census 2011* (Table QS701EW)

should be considered at the Examination in Public and consequently it would therefore follow that given the importance of the status of HA2 for the acceptability of the Newgate Lane proposals, that these proposals too would be more appropriately assessed at an EiP.

3.3 Paragraph 49 is very clear that the refusal of a planning application on prematurity grounds can only occur within a very limited set of circumstances set out below. Whilst this Council considers that this appeal should be dismissed on a number of grounds as set out in Fareham Borough Council's resolution to refuse the application which this Council completely endorses, there is the possibility to consider whether the issue of prematurity could be a reason to refuse in this instance due to an unusual set of circumstances.

3.4 It is recognised that both points a) and b) in paragraph 49 need to be met in order to represent the exceptional circumstances to justify a refusal on prematurity grounds. Point A reads

" 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;

3.5 It is clear that circumstances in a) are met in this instance because these applications are two of several non-policy compliant proposals which undermine the function of a long-established Strategic Gap and that the scale of all these proposals would undermine the plan-making process by predetermining decisions on the scale, location and phasing of development. These proposals would also set a precedent for further speculative developments in various locations in the Strategic Gap without due consideration of their cumulative impact. Consequently the future EiP needs to consider: Which are the most appropriate sites for development? What is the appropriate scale? and what mitigation is necessary?

3.6 However the Council would concede that point b) of Paragraph 49 is not met because the Fareham Local Plan has not reached such an advance position. Point b) reads

b) the emerging plan is at an advance stage but is not yet formally part of the development plan for the area.

3.7 Both circumstances need to apply. However Paragraph 50 does state:

'Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination;'
'Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the

development concerned would prejudice the outcome of the plan-making process.

- 3.8 One could argue that the circumstances in this instance are unusual and consequently an exceptional case could be made. The sites are not identified in the Adopted Local Plan for residential development, are outside the settlement boundary and within the strategic gap. The justification of the sites at planning application stage relied heavily on an allocation in an emerging Plan in which that allocation has been subsequently been withdrawn; it is not known whether this site will reappear in a second Regulation 19 version but that is by no means a forgone conclusion; and if it did it would be subject to a strong objection from the neighbouring local authority with abuts that allocation.
- 3.9 The other aspect that relates to a case for prematurity is that there are a number of other significant proposals being put forward within the Strategic Gap. This Gap is of strategic importance to both Fareham Borough Council and Gosport Borough Council, and consequently the environmental, landscape, transport and infrastructure implications need to be considered as a whole. Indeed Gosport Borough Council would argue that an agreed strategy for the future of the Strategic Gap needs to be produced by both Councils to accommodate the competing pressures in order to maintain the functions of the gap to prevent coalescence and protect the setting of each settlement, maintain a strategic road corridor, continue to provide renewable energy and utility functions, and take opportunities to enhance green infrastructure, biodiversity and recreation benefits for local urban populations.
- 3.10 The development of these two sites will have the cumulative effect together with other speculative sites and potential forthcoming allocations that would be so significant that the location and scale of new development requires full consideration in the plan making process. A decision to allow the appeal proposals would likely set a precedent for future development of the Strategic Gap. In many ways the future of the Strategic Gap between Fareham, Gosport, Lee-on-the-Solent and Stubbington is a primary issue for both Fareham and Gosport Borough Councils and will be a highly prominent issue as part of the considerations for the emerging Fareham Local Plan 2037.
- 3.11 Whilst recognising that this would be highly unusual particularly as there are a number of other grounds on which to refuse the planning application as set out by Fareham Borough Council which this Council supports, it is clear that a plan-led approach is required to ensure that the Strategic Gap can be planned in the most appropriate way rather than a series of ad hoc piecemeal development which places further strain on local infrastructure and impacts on the function of the Strategic Gap itself.

4.0 Primacy of the Local Plan

- 4.1 The Inspector may recall the Council's submission in July 2020 made reference to the High Court case *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* which reaffirmed the importance of an adopted Local Plan even though a district may not have a five year housing supply, as is the case in Fareham Borough. The ruling reaffirmed the primacy of development plan policies and clarified that, where a local authority lacks a five year-housing land supply, granting of permission should not be automatic.
- 4.2 The Inspector will be aware that the primacy of development plans in the English planning system has now been confirmed by a Court of Appeal ruling on two appeals by Gladman³, which emphasised that where a council lacks the required five-year housing land supply, this may tilt the balance in favour of proposed residential schemes but it does not render grants of planning permission automatic.
- 4.3 The court's ruling established that the provisions of the NPPF remain subordinate to the overriding principle established by section 38(6) of the Planning and Compulsory Purchase Act 2004 that decision-makers must have first regard to the terms of development plan policies.
- 4.4 The Council considers that these appeal sites represent a fundamental departure from the current Adopted Fareham Local Plan and that there are overriding strategic policy considerations that outweigh the housing supply issue in this instance.

5.0 Strategic Infrastructure

- 5.1 The Council recognises that the Inquiry focuses on issues relating to the site and its immediate vicinity. The Council would however like to emphasise that as Gosport is on a Peninsula, proposals in the Strategic Gap will likely have a significant impact on the actual and perceived accessibility to the Borough and that a series of speculative developments in the Strategic Gap will have a detrimental impact on recent and current infrastructure investment and will not deliver appropriate levels of mitigation.
- 5.2 In most socio-economic measures Gosport Borough experiences higher levels of deprivation than Fareham Borough including employment, education and skills, and health. There are also a number of significant brownfield sites arising from Ministry of Defence disposals which represent major regeneration opportunities. However many of these sites have significant

³ <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/104.html>

constraints including contamination, under-investment in flood defences and neglected listed buildings.

5.3 The potential of Gosport has been recognised by a recent study produced by the Solent Local Enterprise Partnership (LEP) known as Gosport Infrastructure Investment Plan (GIIP)⁴. This document identifies a number of infrastructure needs including the importance of enhancing overall vehicular accessibility and connectivity to and from Gosport Peninsula. This will in turn support the attractiveness of Gosport as a business location, and enhancing the profile of Gosport as a global marine hub.

5.4 Paragraphs of 5.34 and 5.35 of the main GIIP document provides a useful summary of the importance of improving accessibility:

5.34 Access to Gosport peninsula is via three road routes, one of which – the A32 – is part of the Strategic Transport Network. High levels of out-commuting from the Borough to other destinations outside of Gosport has resulted in high levels of congestion on the A32, B3385 (Newgate Lane) and other roads in the morning and evening peaks. Hampshire County Council as Highway Authority has invested in new and improved road infrastructure to access the Gosport peninsula over recent years in order to improve capacity and journey times as summarised in Figure 5.2, alongside planned investment by Highways England at M27 Junction 9. However, some completed and planned new house building in the area (including within adjoining Fareham Borough) has to some degree absorbed the additional capacity which has been delivered.

5.35 There are also proposals to divert traffic around the outskirts of Stubbington through delivery of the Stubbington Bypass which has received planning permission and funding. The £34 million bypass is intended to reduce journey time and peak hour congestion onto and off the Gosport Peninsula, remove transport barriers to growth and encourage investment and regeneration, including at the Solent Enterprise Zone at Daedalus, and improve connectivity and provide additional network resilience. This will assist in making the Borough more attractive for new business investment and help retain existing enterprise. This new road infrastructure will help to form part of a key transport corridor to and from the Peninsula and it will be important to monitor the scale and type of new development that takes place adjoining the corridor which could impact negatively upon traffic flows and the overall accessibility of the Peninsula.

5.5 The new road infrastructure at Peel Common Roundabout, Newgate Lane East and the Stubbington Bypass together with the successful Bus Rapid

⁴ Executive Summary <https://solentlep.org.uk/media/2556/16399-gosport-iiip-executive-summary-lr.pdf>

Full GIIP <https://solentlep.org.uk/media/2543/gosport-infrastructure-investment-plan-feb-2019.pdf>

Transit scheme represents a significant package of public investment to address current accessibility issues and provides a new opportunity to encourage investment in Gosport to revitalise brownfield sites. The Council's concern that this significant improvement in accessibility and traffic flow will be quickly eroded by a series of car dependent speculative developments in the Strategic Gap.

6.0 Conclusion

- 6.1 Gosport Borough Council maintains its objections to these proposals based on its original representations to the planning applications which whilst not repeated here in detail affirm the position that a strategic approach needs to be taken with appeal proposals and the numerous speculative applications with the Strategic Gap and any forthcoming allocations. The Council considers that due to the strategic implications arising from these applications with regard to the function of the Strategic Gap and their impact on the effectiveness of the transport corridor serving the Gosport Peninsula, it is necessary to consider these applications with all other proposals for the Strategic Gap as part of the Local Plan process. This would afford the necessary consideration that such substantial proposals across the Strategic Gap require and ensure the ability of neighbouring authorities to implement a positive vision for the future of their area in their own Local Plan.

Thank you for the opportunity to update the Council's earlier representation.

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