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)

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

(references to evidence are as follow: cx – examination in chief;
xx – cross examination; rx – re-examination; PoE – Proof of Evidence)

## 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 As noted in opening, Inspector, 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. As you have seen during the course of the inquiry 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. As you have also seen the issue relating to the capacity of the Newgate Lane East/ Old Newgate Lane junction is no longer an issue and these submissions say no more on those matters.

1.3 As explained in opening, Inspector, the framework for your determination on this appeal is set by the following points which are agreed by the parties:

(1) The appeal proposals would introduce a new road layout at the Newgate Lane East/ Old Newgate Lane junction which involves the need for those turning right from Newgate Lane East into Old Newgate Lane to cross two lanes of traffic, it is agreed that if you find that this arrangement is unsafe you should dismiss the appeals;

(2) The Council cannot demonstrate a 5 year housing land supply and therefore the titled balance in paragraph 11 of the NPPF applies;

(3) The proposed development would cause harm to the landscape character and views, at issue between the parties is the extent of that harm;

(4) The proposed development would be within the strategic gap, at issue is the extent to which this compromises the integrity of this part of the gap;

(5) 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;

(6) These criteria include:

- "(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."

1.4 It follows that the key issues in dispute are whether the proposal will have unacceptable traffic implications; whether it is sensitively designed to reflect the character of the

neighbouring settlement, whether it is able to minimise adverse impacts on the countryside and strategic gap and whether it will be sustainably located in relation to the existing urban settlement boundary – that of Bridgemary.

1.5 The structure of these submissions will therefore be:

(1) To provide you with the policy framework for your determination: how the relevant policies of the Development Plan interact with the Framework to enable you to determine the appeal;

(2) To set out the case in respect of the safety implications for the Newgate Lane East/ Old Newgate Lane junction should either or both of the development proposals be allowed;

(3) To set out the case on landscape and visual impact and impact on the strategic Gap;

(4) To set out the case on whether the proposed development would be sustainably located in relation to the existing urban settlement boundary and whether it would be adjacent to, and well related to, and can be well integrated with the Bridgemary; and

(5) The planning balance.

1.6 Before addressing the issues in detail however, it should be noted at the outset Inspector that the gravamen of the evidence at this inquiry has demonstrated that the proposed development is simply in the wrong place. In that regard the appeal should be dismissed, not just because the junction arrangement would be unsafe, but because the proposed development would comprise everything that policy DSP40 in substance seeks to prevent. In that regard it engages at a fundamental level with the purpose of DSP40. Policy DSP40 looks to ensure that, in circumstances where a five year supply of housing cannot be demonstrated, there is a controlled release of land through a plan-led approach in accordance with criteria which ensure that any development permitted will represent a logical extension of the settlement to which it is adjacent and will therefore be able to minimise any harm to landscape character and the strategic gap. Furthermore, even if such an arrangement would be present, development should not be allowed if (amongst other considerations) it is not designed sensitively to reflect the character of a neighbouring settlement or would be unsafe from a transport perspective.

1.7 The development proposed in these two applications would sit away from the settlement boundary and present as an isolated pocket of development within the

countryside. The evidence has demonstrated that the Appellants fail to appreciate the significance of this in a number of ways. The proposed location of the development prevents it from being able to present as a logical extension of Bridgemary to which it would not be adjacent nor well integrated and well related with. Its location would not be sustainable in that it would prevent the development from being able to provide appropriate opportunities to promote sustainable transport modes which can be taken up (NPPF 108(a)). The fact that it is an isolated pocket of development away from the settlement boundary means that its impacts on the countryside and strategic gap cannot be minimised. Furthermore, Peel Common is recognised within the FLA (CDG15) as a small, isolated settlement of ribbon development which lies within the wider gap. Indeed containing as it does only 80 dwellings, it is less than half the size of the North and South sites taken together and only 5 households larger that the North site taken in isolation. As such, the urban perimeter block design of development which the development proposals represent does not and could not reflect the character of Peel Common, the neighbouring settlement. Finally, the change to its layout, which the development would require, would render the junction unsafe to those turning right into Old Newgate Lane.

1.8 The essence of this difficulty with the location of the proposed development is recognised throughout the sizeable body of objections raised by members of the public, Inspector. Indeed, this represented the substance of the representations made on the second Friday of the appeal:

- Councillor Hayre (County Councillor for the Crofton division of Fareham) – noted that the development would be "A dense development sandwiched between old and new Newgate Lane and would negate the character of the area and impact the landscape";
- Aimee White from Woodcote Lane spoke of the impact on the character and views of her Lane which the proposed development would have;
- Andrew Thomas concentrated his evidence on the impact on the countryside surrounding his dwelling of Hambrook Lodge;
- Councillor Jim Forrest (representing Stubbington Ward which contains the Peel Common Community of Newgate Lane, Woodcote Lane and Albert Road) noted that the proposed development applications together would triple the population in

the vicinity of the wildlife haven which the Southern Water treatment plant has come to be, he also gave evidence that:

> *"The value of the Peel Common Landscape, and views beyond it stretching towards Titchfield, also includes the sense of place it offers. Travellers between Fareham and Stubbington or Lee leave behind an urban landscape at HMS Collingwood and the Speedfields retail park. They pass through countryside surrounding a largely unspoiled hamlet, before returning to an urban fringe landscape at Solent Airport.*
>
> *This part of the Strategic Gap, as well as being an area to enjoy leisure times, gives residents on either side of it a real sense of their distinct communities. A modern estate set down in the heart of it would damage it irreparably."*

- Mr Marshall, a member of the committee of the Fareham Society, noted both that development of the scale and location proposed would significantly reduce the openness of the Gap thereby being detrimental to its important function and that, by virtue of its poor relationship with Peel Common and separation from Bridgemary it would appear incongruous and harm the character and appearance of the area;
- Alison Roast representing the Lee Residents association spoke of the harm which the proposals would do to the strategic gap.

## 2. The Plan led system and the framework for determination of the Appeal

2.1 A central tenet of planning law is that development should come forward in a planned way. This means that where any development is to be located within a local authority area it should be the subject of local determination by way of the Development Plan process. This is reflected in the fact 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 at paragraphs 15-20 of NPPF 2019 which explain that strategic policies should set out a strategy for where sufficient housing should be located.

2.2 This 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, 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."*
>
> (my emphasis)

2.3 As Ms Parker explained in her evidence, the importance of the plan-led system has been emphasised in numerous appeal decisions. These include that from 31 May 2018 at Great Bentley, Essex (CDJ 26: Appeal refs: *APP/P1560/W17/3183678, 3183695 and 3183626*), in which Inspector C.J. Ball said:

> *"75. One of the core principles of the Framework is that planning for future development should be genuinely plan-led, providing a practical framework for local decision making within which decisions on planning applications can be made with a high degree of predictability and efficiency. Local Plans are*

*the key to sustainable development. The clear aim of the plan-led system is to direct development to where it is needed."*

2.4 In relation to Fareham these dicta loom large because it has a strategic vision, set out within the Development Plan Core Strategy policies CS2, 6 and 14, which directs where development should go. In particular the Core Strategy contains strategic objectives SO1 and SO2 and to meet these policy CS14 is clear that

> *"Built Development outside of 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 supporting text notes at 5.146 that

> *"The strategy concentrates development into the existing urban areas and strategic sites. To support this approach, development in the countryside, outside the settlement boundaries will be strictly controlled…"*

2.5 This development strategy is continued in the Local Plan Part 2. Under Chapter 3: existing settlements there is a section on "*Defined Urban Settlement Boundaries*" paragraph 3.7 of which provides that "*Development outside the DUSBs is generally subject to restrictive policies, which limit uses to those appropriate to these areas, such as purposes directly related to agriculture, forestry, horticulture or related infrastructure.*" As we have seen Policy DSP40 provides that permission for development outside of the defined development boundaries of settlements will only be granted where a proposal meets criteria (i)-(v).

2.6 The supporting text provides at 5.163-4 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."*

2.7 Ms Parker explains in her evidence 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.

***Weight given to a breach of DSP40***

2.8 The fact that the proposed development would not be sustainably located, would not be adjacent to and well related and integrated with Bridgemary, would not be able to minimise impacts on the countryside and strategic gap and would cause unacceptable impacts on safety is addressed below. Ms Parker explained that, in those circumstances, where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, the fact that the proposal is in breach of policy DSP40 must be given very significant weight in the planning balance. This is because the fact that policy DSP40 is 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 in *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council [2017] UKSC 37* (CD35) ("*Suffolk Coastal*") 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."*

2.9 If there were doubt over the weight to be afforded to any such breach (as Mr Weaver asserted) this is dispelled by reference to the decisions of your fellow Inspectors, Sir:

Portchester (CDJ1) (5 November 2019)

2.10 There was difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). This spread was similar to the position in respect of the Appeal Cases (a difference of 2.43 years). At paragraph 90, the Inspector Gould errs on the side of caution and considers the Appellants figure better represents the current situation, however, notwithstanding this fact, he concludes at paragraph 97 that "great weight" should be attached to the conflict with Policy DSP40, CS5 and the development plan. This means that, as Mr Weaver accepts the weight to be applied is the same whether the HLS be approximately 1 year or 3.5 years, he must accept that the Portchester Inspector decided that a breach of the policy in circumstances reflecting those in this appeal should be given "great weight".

2.11 Mr Weaver incorrectly suggested (updated proof 13.18) that the tilted balance was not engaged in the decision at *Porchester*. He accepted and withdrew this assertion in xx. However, as he also accepted in xx, whether or not the tilted balance is engaged does not determine the weight to be given to policies (whether they be out of date or not) which remains a matter of planning judgment for the decision maker. This was made clear by both the Court of Appeal and the Supreme Court in *Suffolk Coastal* (see for example Lord Carnwath at paragraphs [54]-[56] CDK5). The fact that the most important policies for determining the application (including DSP40) are rendered out of date by virtue of a lack of housing land supply simply triggers paragraph 11(d). This factor has no bearing on whether DSP40 should be given reduced weight. In rx, Mr Weaver suggested that leaving the weight unchanged as a matter of fact, in this appeal, would have no point. But that ignores the fact that the Inspector Stone (the *Posbrook* appeal and Inspector Downes (*Land West of Old Street*) carefully explain why full weight should be given as we shall see.

2.12 But in any event, as Ms Parker explains in her further rebuttal (paragraph 2.5), and as Mr Weaver accepted in xx, he was wrong to suggest that in *Portchester* the titled

balance was not engaged. It was. At paragraph 100 Inspector Gould concludes that that the adverse impacts of the granting planning permission would significantly and demonstrably outweigh the benefits as a whole - a decision he has reached having applied the tilted balance set out in NPFF paragraph 11(d)(ii). It was common ground in *Portchester* that heritage matters did not amount to a separate reason for refusal because the less than substantial harm to the significance of the heritage assets, when this harm was weighed against the public benefits of the proposal, did not provide a clear reason for refusal of permission pursuant to paragraph 11(d)(i). That harm was, however, weighed in the balance along with the other harms and benefits when the Inspector carried out the titled balance under 11(d)(ii), following the approach set out by Coulson J in *Forest of Dean DC v. SSCLG [2016] PTSR 1031* at [37] and [47] (see Appendix 1 to the further rebuttal). It follows that the balancing exercise carried out was directly comparable to that in these appeals.

Land East of Posbrook Lane (JP rebuttal appendix 2) (April 2019)

2.13 In this Appeal Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. Inspector Stone also determined that because of the lack of a five year housing land supply policies to protect the countryside such as CS14, 22 and DSP6 did not have full weight rather they had significant weight. In respect of Policy DSP40, however, he concluded at Paragraph 68 that:

> *"…The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight."*

2.14 As with the *Portchester* decision, it therefore follows that if Mr Weaver accepts that the weight to be applied to a breach of policy DSP40 is the same whether the extent of the shortfall is 1 or 3.4 years, he must also accept that Inspector Stone decided that a

breach of the policy in circumstances reflecting those in this appeal should be given "significant weight" and that the policy be given "full weight".

Land West of Old Street, Stubbington (JP Further Appendix 3) (January 2019)

2.15 In the case of the *Land West of Old Street,* Stubbington (Appeal Ref. APP/A1720/W/18/3200409 provided at JP further rebuttal Appendix 2), as with the previous appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial. At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

> *"Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing 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 would be a matter of the greatest weight."*

2.16 As with *Portchester* and *Posbrook* it must therefore follow that if Mr Weaver accepts that the weight to be applied to a breach of policy DSP40 is the same whether the extent of the shortfall is 1 or 3.4 years, he must also accept that Inspector Downes decided that a breach of the policy in circumstances reflecting those in this appeal should be "*a matter of the greatest weight.*"

The Burridge Decision (CDJ2)

2.17 The other decision Mr Weaver refers to is a hearing before Inspector Parker in relation to a single dwellinghouse. Mr Weaver incorrectly contends that Inspector Parker applied limited weight to policy DSP40. At paragraph 32 he states:

> "*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, LPP2 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.*"

2.18 Mr Parker then went on to say (at [33]) that, had an issue with the Solent SPAs been resolved, nevertheless the proposal would cause material harm to the appearance of the area and biodiversity which significantly and demonstrably outweighed the benefits. What he has done therefore, is attached limited weight to conflict with policy arising solely from the housing in the countryside. He does not state the weight he has given DSP40 in isolation, rather he has said that he would dismiss the appeal because of harm to character and appearance and biodiversity. His approach therefore is consistent with the approach taken by the Inspectors in the *Portchester*, *Posbrook Lane* and *Land West of Old Street* appeal decisions.

Conclusion on DSP40 and the titled balance

2.19 The Framework is a material planning consideration, but it does not and could not displace the primacy of the Development Plan. Paragraph 11 of the Framework (2019) provides at (d) in respect of decision taking that:

> *"where there are no relevant development plan policies, or the policies which are the most important for determining the application are out-of-date (7), granting permission unless:…*
>
> *(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."*

2.20 However, as explained, the fact that these policies are out of date does not prescribe the weight which should be attached to them and any conflict with them. The decision referred to above makes clear that policy DSP40 should be given full weight and that any conflict with it should be a matter of the greatest weight. This was the answer Ms Parker gave in rx to clarify what she meant in xx when she said in response to the question "*Can't be full weight. Must be downward pressure. We don't agree how much*" she said, "*I don't agree*". In rx she said:

> *"As I say in my proof of evidence, I agree with the Inspector (referring to Inspector Stone at paragraph 68 of the Posbrook decision) the policy should have full weight and any conflict with it significant weight*."

2.21 Indeed, given that Mr Weaver accepts in the SOCG on HLS (paragraph 2.4) that it is not necessary for you, Inspector, to determine whether the shortfall is 0.97 or 3.4 years because in either case such shortfall is material, it must follow that the only approach consistent with the decisions just referred to is to give DSP40 full weight and any conflict with it the greatest weight, however that is defined. Mr Weaver wrestled with this in xx and was unable to justify a different approach. In rx when specifically reminded about the date of the spatial strategy, footnote 7 and when it was suggested to him that Inspector Downes in *Land West of Old Street* (Appendix 3) had used the words "the greatest weight", he aligned with this and said a "reasonable approach" was needed. The difficulty for Mr Weaver is that what Christina Downes said in paragraph 11 was that "*Conflict with it* (DSP40) *would be a matter of the*

*greatest weight*." She was not performing a comparative exercise between all the policies but recording that DSP40 is in accordance with the framework, provides the mechanism for the controlled release of land through a plan led approach, and that conflict with it therefore was a matter of the greatest weight – the most weight of all the considerations she had to determine. It is submitted that this is plainly the approach you also should take Inspector.

Highway Safety

2.22 Policy DSP40(v) requires that proposed development should cause no unacceptable traffic implications and CS5(3) provides that the Council will only permit development which:

> - *"does not adversely affect the safety or operation of the strategic and local road network, public transport operations or pedestrian and cycle routes."*

2.23 The 2019 NPPF is clear that at paragraph 109 that developments should be refused if "*there would be an unacceptable impact on highway safety*". Indeed, Ms Parker at CDJ27 provides you with the Appeal decision at *Boxford APP/D3505/W/18/3197391* in which Inspector Warder considered the effect of the new paragraph 109 of the Framework in relation to highway safety. The relevant highway authority (Suffolk County Council) had not objected to the application, but Inspector Warder confirmed that the District Council was entitled to reach its own conclusions on the highway effects of the proposal (paragraph [20] last line). In respect of highway safety, he found that (paragraph [24]) if there would be an unacceptable effect on highway safety the development should be refused permission.

2.24 In this case Ms Hoskins has sensibly conceded that if the junction arrangement is unsafe you should refuse permission, Inspector.

A Sustainable Location for development

2.25 DSP40(ii) requires that development be sustainably located and that it be adjacent, well related to and well integrated with the neighbouring settlement boundary. These requirements are discussed further at the relevant section of these submissions. CS5(2) provides that:

> *"Development proposals which generate significant demand for travel and or are of a high density be located in accessible areas (defined as including access to shops, jobs, services and community facilities as well as public transport) that are or will be well served by good quality public transport*".

2.26 The Framework provides at paragraph 108 that:

> "*In assessing…specific applications for development, it should be ensured that (a)* ***appropriate opportunities*** *to promote sustainable transport modes* ***can be*** *– or have been – taken up, given the type of development and its location"*
> (my highlighting)

2.27 To refuse permission for unsustainable development which cannot take opportunities to promote sustainable transport modes because of the development's location is entirely consistent with both policy CS5 which requires development to be well served by good quality public transport, DSP40 and paragraph 108.

2.28 Having considered the framework for your determination, Inspector, I now go onto consider safety matters in section 3.

**3. The Safety of the Newgate Lane East/ Old Newgate Lane**

3.1 The existing situation at the Old Newgate Lane East/ Old Newgate Lane junction is that vehicles turning right into Old Newgate Lane do so across a single lane of traffic. The proposed development would change this situation and require a greater number of vehicles including the traffic generated by the appeal proposals, to cross two lanes of traffic.

3.2 Guidance in the form of DMRB CD123 (JM November Rebuttal Appendix 2) paragraph 7.16.2 provides that:

> *"7.16.2 Where the 85th percentile approach speed is greater than 72 kph (45 mph) right hand turns should be separately signalised.*
>
> *NOTE Where the 85th percentile speed is greater than 72 kph (45 mph) there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed."*

3.3 Ms Hoskins accepted in xx that this guidance is mandatory in its terms and allows no discretion where 85th percentile speeds are above 45 mph. As such she accepted that if speeds were in excess of 45 mph the junction would be unsafe unless separately signalised. When asked about Table 2.7 on p.30 of the SoCG T she accepted that the junction would be unsafe therefore if the 44.8 mph speed in respect of the October 2018 survey were just 0.3 mph greater.

3.4 It follows that the safety issues revolve around the speed of approaching vehicles and the fact that under the new junction arrangement required by the appeal proposals, those vehicles will be approaching in two lanes of traffic. There is a dispute between the parties as to the speed vehicles are currently travelling – but not much of one.

Vehicle Speeds and the 85th percentile

3.5 The Appellant's position in respect of how one measures 85th percentile speeds has changed during the run up to this appeal. Within her PoE Ms Hoskins stated that: "*As the **24 hour** 85th percentile design speeds are below 45mph and appear to be reasonably consistent in speed travelling past Old Newgate Lane, it is not a requirement to have a separately signalled right turn at this junction.*" (my highlighting). In xx Ms Hoskins accepted that it is not the 24 hour speeds which are relevant, one can an indeed should in accordance with DMRB CA 185 measure shorter periods. One also needs to make an allowance for wet weather in respect of the Appellant's traffic counts from 2018 and 2020. As already noted, whether the junction is unsafe without full signalisation turns, in Ms Hoskin's view, on a fraction of a mile per hour.

3.6 CA 185 (produced as appendix F to the SoCG T) has two requirements which, it is agreed, are relevant for determining whether 85th percentile speeds are representative:

(1) Speed measurements should be taken "in free flow conditions where vehicles are unlikely to be accelerating or braking" (paragraph 2.5); and
(2) "A minimum number of 200 vehicles shall be recorded during each individual speed measurement period".

3.7 This sets the context for the following paragraphs which relate to Speed Measurement. Paragraph 2.8.2 requires that speed measurements "should be taken outside of peak traffic flow periods". NOTE 1 then states that 10-12 and 2-4pm are "typically" non-peak periods – but may not be, for example should a local school close at 3pm. Ms Hoskins expressly accepted in xx that what CA 185 does not do is rule out other non peak periods, in her words "*It neither rules them in or out*". This concession reflects the word "typically" (a word which also appears in NOTE 2 in relation to neutral months – it was not suggested by either party that other months could not be neutral months; both the Appellant's 2020 February/ March survey and the Council's November survey are considered by the parties as being relevant

notwithstanding those are not neutral months and measurements for those surveys are not taken in two periods a month apart).

3.8 The reality is that provided measurements are taken outside of peak hour times, in free flow conditions and there are more than 200 vehicles recorded in a speed measurement period, there is no reason not to take account of those periods as demonstrating 85$^{th}$ percentile speeds in excess of 45 mph, as the Council's witness Mr Mundy indicated. Ms Hoskins pointed to the wording in 2.6.1 that as many vehicles as practical should be measured and that the higher numbers were more representative of the road, but the guidance does not state that this paragraph operates to render other off peak periods not relevant.

3.9 Indeed the evidence provided by Mr Mundy (PoE paragraph C) demonstrates that collisions at junctions involving a right turn across two lanes of traffic, which were subsequently fully signalised, occurred throughout the evening and during the day. Given the need for free flowing conditions and the instruction within CD123 (Note to 7.16.2 reproduced above) that the risk relates to right turning vehicles colliding with oncoming vehicles travelling at speed, Mr Mundy is plainly right to regard non peak times recording more than 200 vehicles as being relevant 85 percentile speeds.

3.10 The consequence of this is that, on the Appellant's own speed surveys, the junction is unsafe as these surveys record off peak 85$^{th}$ percentile speeds in excess of 45 mph with in excess of 200 vehicles recorded in respect of Northbound vehicles:

- Between 5-6 am in the 2018 survey 275 vehicles were recorded with an 85$^{th}$ percentile speed of 46.4 mph; and
- Between 5-6 am in the 2020 survey 315 vehicles were recorded with an 85$^{th}$ percentile speed of 45.4 mph.

3.11 The Council's more recent speed survey (agreed to be relevant in the SoCG T at 2.71) shows that speeds with an 85$^{th}$ percentile speed in excess of 45 mph occurred:

- Between 5-6 am where 227 vehicles were recorded with an 85$^{th}$ percentile speed of 49.1 mph; and

- Between 7-8pm where 265 vehicles were recorded with an 85th percentile speed of 46.6 mph.

3.12 Given the concession by Ms Hoskins that CD123 leaves no discretion, requiring full signalisation where 85th percentile approach speeds are recorded in excess of 45mph, and that in such circumstances the junction would be unsafe, the matter ends here Inspector. It is not acceptable to introduce a further 115 (South site only) or 190 households (both sites) to a proposed junction operation which is unsafe. At present the Peel Common settlement consists of around 80 dwellings (see Councillor Forrest's representation), the development would triple the number exposed to this risk and add the context of a second approach lane to cross as discussed below.

3.13 This reality is reflected in the Appellant's own Audit (Mr Jones Appendix 13) which notes the problem that:

> *"The traffic signal staging diagram doesn't appear to show the Gosport Road southbound right-turn phase operating within a signal stage."*

3.14 The RSA notes that CD123 states that where the 85th percentile speed is greater than 45mph the right turn should be separately signalled. It goes on to recommend at detailed design stage:

> *"signal staging/ phasing should incorporate a separately signalled right turn into Newgate Lane. It would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly."*

3.15 As Mr Mundy explained in xx this recommendation recognises both that a separately signalled turn is required, and that signal staging and phasing arrangements should be based on measured speeds.

<u>Crossing two lanes of traffic</u>

3.16 So a separately signalled right turn is required as a result of the 85th percentile speeds alone. But even if there were no 85th percentile speeds in excess of 45 mph, the guidance is clear that a fully signalised right turn could still be required for safety reasons. As accepted by Ms Hoskins in xx, the relevant authority (Hampshire CC) can insist on a fully signalised right turn if needed for safety reasons even for lower speeds. This is because Section 1.1.2 and 1.1.6 of the Traffic Signs Manual (JM November rebuttal appendix 1) leaves signing and signalling matters for Traffic Authorities to determine for the purposes of road safety. The fact that opposed right turns are unsafe, should 85th percentile speeds be above 45 mph, is only one example given (section 8.4.1 of the Manual).

3.17 Mr Mundy was clear in his evidence, both written and oral, that Hampshire Cunty Council consider a right turn across two lanes of traffic unsafe in and of itself for the following reasons:

(1) There are ten traffic signal junctions in Hampshire where there has been a need to change from the Appellant's proposed gap seeking arrangement to a fully signalised right turn phase. The personal injury accident record at six of these junctions identifying just those collisions involving right turning movements are reproduced at JM PoE 4.20:

1. Portchester Road/Downend Road - 11 collisions before; 0 collisions after
2. The Avenue/Gudge Heath Lane - 8 collisions before; 2 collisions after
3. The Avenue/Bishopsfield Road/Veryan - 4 collisions before; 0 collisions after
4. Park Road South/Solent Road - 13 collisions before; 0 collisions after
5. Park Road South/Elm Lane - 22 collisions before; 1 collision after
6. London Road/Rosemary Lane/Green Lane - 24 collisions before; 2 collisions after

(2) Five of these junctions are within a 5 kilometre radius of the proposed junction and it is Hampshire County Council's view that a particular problem

exists in this area when drivers are required turn right across 2 lanes of opposing traffic at a signal junction (JM PoE 4.21).

(3) Mr Mundy explained that drivers are not accustomed to turning right across 2 lanes of on-coming traffic at signal junctions in Hampshire. There are only 4 out of 40 junctions where drivers may turn across 2 lanes of traffic (JM PoE 4.11). None of these are in this area of Hampshire and all are within 30mph speed limits. Mr Mundy's explained in his cx that under the Appellant's proposal driver inexperience and uncertainty would lead to poor decision making when turning right across 2 lanes of traffic at a signal junction. This would be inconsistent with the signalling arrangement at other signal junctions in Hampshire resulting in road collisions and the need to fully signal the right turn movement at a later date.

(4) Mr Mundy's position is supported by the position indicated by several other highway authorities across the region (JM PoE 4.15-4.17). In his view the Appellant's proposal would be contrary to that accepted by other local authorities. In particular both West Sussex County Council (Barry Edmunds) and Kent County Council (Toby Butler) said they would not permit such an arrangement for safety reasons.

(5) The use of a fully signalised right turn across 2 lanes of ahead traffic at new traffic signal junctions has been adopted for over 20 years in Hampshire. The Appellant's proposal is contrary to this long established practice (JM PoE 4.14).

3.18 Under xx Mr Mundy explained that, should the proposed arrangement be permitted, there would be incidents where the line of oncoming cars in the offside lane would obscure the view of oncoming traffic in the nearside lane. When it was suggested to him that should a car in the offside lane be obscuring a car in the nearside lane by the time that car had passed the junction so too would the car in the nearside lane, he disagreed. That proposition is based upon the assumption that there are only two cars involved; but, as Mr Mundy explained, during many hours of the day (including the

AM peak) there would be many cars and they would be staggered, so that the car in the offside lane obscuring a car or motorbike in the nearside lane may not be the closest to the driver making the turn. The vehicle obscuring his view may be some way back in the line of traffic. That Mr Mundy's concerns are justified was also plain, it is submitted, from the xx of Ms Hoskins. She accepted that the view of a car in the nearside may be obscured "for a split second". But it is submitted that at speeds of 45 mph sometimes a split second is all it takes. She accepted that once a driver began to turn across the first lane of traffic, he was committed to cross the second and could not retreat because a car in the offside lane would be coming towards him closing the gap. He would turn across the second lane even if unsafe to do so.

3.19 The Appellant suggested that the indicative arrow would not be often called because vehicles would turn in the gaps or they would be able to turn in the 5 second intergreen period. Ms Hoskins relied upon her table 5-2 on p.18 of her PoE to that effect. However, as Mr Mundy explained the fact that there were no gaps for drivers to turn in during the entirety of the morning peak did not mean that drivers would not attempt to turn if they thought they saw a gap or became impatient waiting up to 1 ½ minutes for the intergreen to be triggered. Ms Hoskins accepted in xx that the model could not predict whether drivers would attempt to cross if they thought they saw a gap, it could only model whether there were gaps. In the PM peak all but one of the drivers on average are modelled as turning in gaps, but again Mr Mundy explained that this does not alleviate concerns. It merely means that traffic is lighter and so travelling faster with more gaps. The fact that gaps would exist does not make gap seeking safer, indeed as more gap seeking would be taking place the arrangement was less safe.

3.20 Ms Hoskins has provided you. Inspector, with Rule 180 of the Highway Code but this is of no assistance as it does not contemplate crossing two lanes of traffic. Nor does it contemplate the points made within CD123 about danger increasing with speed of the oncoming traffic.

3.21 Mr Mundy represents the Highways Authority and has been engaged in the practice of traffic design for 29 years. He is intimately familiar with the local transport network

and surrounding area. It is to Hampshire County Council and its experienced officers that Guidance (Traffic Signs Manual Chapter 6 1.1.2 and 1.1.6 JM rebuttal appendix 1) leaves the decision as to whether the indicative arrow method of control is unsafe, as agreed in the SoCG T (paragraph 3.19). Ms Hoskins accepted in xx that Mr Mundy has considered this junction specifically, he has not simply applied a blanket approach. In contrast Ms Hoskins has 6 years' experience in traffic engineering and modelling. Where the two differ it is submitted that you should give more weight to the views of the Highways Authority and Mr Mundy.

Late Evidence

3.22 During xx for the first time Ms Hoskins raised two new junctions: Ranvilles Lane and Sandringham Road, suggesting that these had a bearing on safety issues because they also involved drivers crossing two lanes. This however, merely demonstrated the safety concerns present in such an arrangement. Mr Mundy in his note explained:

> (1) that junctions other than traffic signal junctions could also suffer safety problems and that where these are identified the Council introduces remedial measures (paragraph 1.3);
> (2) Ranvilles is within 150m of a traffic signal junction which affects traffic arrival patterns, frequency and duration of gaps. In particular:
> - all westbound traffic is stopped at that signal for 20 second intervals at the third stage providing a sizeable gap not present at the Newgate Lane East/ Old Newgate Lane junction;
> - the fourth stage single lane exit from Highlands Road runs for 20 seconds during which the majority of traffic continues past the Ranvilles Lane junction in single file;
> - in contrast the Newgate Lane East/ Newgate Lane junction is isolated from any other traffic signal junction and during the 1.5 minute green time on Newgate Lane East there would be a random arrival rate of traffic during which traffic will attempt to turn across 2 lanes of traffic – a more dangerous arrangement in his professional view;

- in any event there is a safety problem at this junction with a cluster of 6 separate personal injury accidents in the last 3 year period and 4 right turn movement collisions over the last 10 years, 3 of which involved 2 wheeled vehicles, mirroring the fatal collision at the A27 Downend Road junction (2.6-7 of the note – Ms Hoskins is reported as accepting that one of the right turn movements should be taken into account as occurring within 3 years)

(3) In respect of the A27/ Sandringham Road turn, Sandringham Road is a cul-de-sac serving only 34 properties and is located in a 30mph zone, it is also located just 100 metres from the A27 The Avenue/ Highlands Road traffic signal junction. It is not comparable.

***Conclusion on safety***

3.23 It follows from the above inspector that the best evidence is that the indicative arrow method of junction operation would be unsafe. The late evidence from Ms Hoskins merely serves to underline the unsafe nature of the proposed Newgate Lane East/ Old Newgate Lane Junction. The junction would be unsafe due to 85 percentile approach speeds alone, but more so in relation to the need to cross two lanes of traffic. This represents a "true safety issue" to use the words of Mr Weaver. In those circumstances both parties agree that the appeal should be dismissed.

## 4. Landscape and Strategic Gap

**Landscape**

4.1 Policy DSP40 requires both that a proposal is sensitively designed to reflect the character of the neighbouring settlement and that any adverse impact on the countryside is minimised.

Minimising Harm to the Countryside – the second part of DSP40(iii)

4.2 Minimise is a normal English word meaning to make small or insignificant – to reduce something to a level that is minimal. That this is the correct meaning to apply is apparent from Inspector Stone's decision in relation to *Posbrook* (JP further rebuttal Appendix 2). He reasoned the breach of Policy DSP40 in relation to character harm as follows:

- Paragraph 26-7: although landscaping would ameliorate visual harm to some extent the landscape and visual effects would still be substantial and harmful in the short to medium term and albeit this would reduce in the longer term, he would still view the adverse effect as significant;
- Paragraph 31: overall the development would result in material harm to the character and appearance of the area;
- Paragraph 68: The harm he has identified in relation to the landscape results in a conflict with the relevant criteria within DSP40 and for the reasons given in paragraph 31 this results in a conflict with that part of DSP40.

4.3 Similarly Inspector Downes in the *Land West of Old Street, Stubbington* decision (JP further rebuttal appendix 3) reasoned a breach of Policy DSP40 as follows:

- Paragraphs 23-4: there would be an overall significant and harmful effect on landscape character even after mitigation;
- Paragraph 28: there would be a moderate harmful effect on views reducing to moderate-minor over 15 years;

- Paragraph 29: this represented long term, permanent and adverse change;
- Paragraph 39: The harm she identified in relation to landscape resulted in a conflict with DSP40 because the proposal would fail to minimise any adverse impact on the countryside.

4.4 Within the early part of his Evidence in Chief, after he had said that he was not a highways expert but couldn't see a safety concern, Mr Weaver discussed the policy test in respect of landscape and strategic gap. He said as follows:

> *"There will be some impact. It (DSP40) is a different test. There is no embargo on development. The test is whether it causes harm."*

4.5 In that context I cross examined Mr Weaver on the difference between "in principle harm" by virtue of the presence of development outside of the settlement boundary, where the only harm was to the spatial strategy, and site specific harm where the specific development proposed causes actual harm to the landscape or the strategic gap. During the course of that cross examination Mr Weaver accepted there would be landscape harm and therefore a breach of the policy. He said:

> *"There would be a minor breach in terms of landscape, and you would see it on any similar proposal* (meaning development of this scale in the countryside)*."*

4.6 In rx he was taken back to policy DSP40(iii) and asked about the wording initially quoted as "minimise harm" but then corrected to "minimise impact". He said that not all negative impact needed to be avoided, there would always be some harm and the policy was complied with. But in these answers, he did not apply his mind to the distinction between harm caused by virtue of simple location outside of the settlement boundary and specific harm caused by the development to landscape or strategic gap.

4.7 It is submitted that, on a true construction of those decision letters, Inspector Stone and Inspector Downes interpret DSP40(iii) as providing a mechanism to allow development outside of the settlement boundary even in the face of the necessary harm which that would cause to the spatial strategy. However, if the development proposal were to cause harm to landscape this would represent a breach of the policy. Both parties agree there would be a degree of harm and therefore there is a breach of the policy. The alternative interpretation would be to use the exact wording of Inspector Stone there would be a breach if harm was "material" or to use the words of Inspector Downes there would be a breach if harm was "significant".

4.8 It follows that should you, Inspector find that the development would result in landscape harm, whether that be to character or views or both, which is termed as material or significant, then the harm has not been minimised for the purposes of DSP40(iii) and there is a breach.

<u>The level of Harm</u>

4.9 Mr Weaver based his planning balance evidence in relation to landscape character and views on Mr Atkin's conclusion that the proposals would result in "*a limited impact at a highly localised level*" (paragraph 12.67). However, in respect of visual harm this is not a correct classification of the harm and in respect of landscape character the reliance on Mr Atkin's LVIA is misplaced as a result of his misunderstanding the sensitivity of the landscape. The degree of harm identified by Mr Dudley should therefore be preferred as representing the true position, which is that any harm will be material and significant harm which breaches the requirements of DSP40(iii).

*Weighing the evidence of Mr Dudley and Mr Atkin*

4.10 When weighing the evidence of Mr Dudley and Mr Atkin it is submitted that the quality of Mr Atkin's evidence suffers in comparison. Mr Atkin accepted that his LVIAs contained a clear error in that they incorrectly refer to the county Landscape

Character Type as "Open Coastal Shore" rather than the "Coastal Plan Open Landscape Type" (see for example 4.25-8 of CDA48). Following this incorrect summary it is stated that given the scale of the site "*impacts are not likely to be significant*" (LVIA 4.27). In contrast Mr Dudley identified the correct Landscape Type and concluded that the site is "strongly representative" of that type. This then feeds into his choice of receptors at a later part of his LVIA.

4.11 This lack of care also manifested itself in Mr Atkin's proof of evidence where he provided a summary table (Table 2 on page 23) relating to landscape character area LCA8. This purported to address the relevant FLA development criteria and enhancement opportunity along with a response, and yet in respect of the box relating to the criteria:

> *"Safeguard the area's vital role in maintaining the separation of settlements and a clear distinction between urban and rural areas."*

his text ends incomplete at "this is narrowed between" with no explanation.

4.12 Furthermore, he introduced table 2 at paragraph 4.30 explaining that "*The relevant issues are set out in the following table, accompanied by a brief response as to how/why the proposed development responds positively.*" He accepted in xx that the development criteria in respect of LCA 8.1 (at page 161 of the FLA at CDG15) are preceded by the word "*development proposals will need to*" followed by a series of criteria which include as the first relevant criteria:

> *"Protect the open, predominantly agricultural and undeveloped, rural character of area 8.1a".*

4.13 Yet in the table he has omitted this first criteria. In xx he was given the opportunity to say that this was an omission, but instead he insisted that he had made a conscious and deliberate decision to produce table 2 with no reference to this criterion because the development could not respond to it. The result was that his table gives the impression that in his view the development proposal could respond positively to the

development criteria on page 161; no qualification is given in respect of the first criteria. Yet in reality Mr Atkin accepts that in this location it is impossible to design a development proposal such as the Appeal schemes which is capable of protecting the open, predominantly agricultural and undeveloped, rural character of area LCA8.1a. This represents a clear indication that this is an inappropriate location for development of this type – the adverse impacts in relation to this first criteria are simply not capable of being minimised, and Mr Dudley explained in cx that this was the most important of all the criteria.

4.14 In respect of recording the susceptibility to change of LCA 8.1a at 6.26 of the LVIAs (the North site is at CDA48, but the point applies to both), it is stated that this is "moderate to high". Yet in xx Mr Atkin accepted this was a mistake, in that the susceptibility assessment given at page 153 of the FLA is "high". It is the value, which is moderate to high, thus resulting in a sensitivity of "high". Mr Atkins did not dissent from this assessment when this was pointed out to him, but the reality is that this must taint his assessment of the susceptibility of the relevant landscape to the change proposed.

4.15 Furthermore, in respect of views the LVIA at page 57 dismisses views from the "wider road network, limited by the combination of vegetation, development and flat landscape" as not "significant" within the section relating to views from Newgate Lane and Woodcote Lane. Although these views are identified, the later discussion on significance, does not address the reality that there will be views such as 1 and 2 from Woodcote Lane which will be moderate adverse (page 48-49), and 8 and 9 from Newgate Lane which will be moderate to major adverse and Major adverse in the assessment put forward for the Appellant for both sites. The significance of effect for these views remains significantly harmful in spite of any vegetation, development or flat landscape. In contrast Mr Dudley appraises the entirety of affected views at his 8.25-27.

4.16 In those circumstances where judgments differ, Mr Dudley's view should be preferred.

Receptors

4.17 GLVIA 3 (CDH16) requires an identification of both landscape and visual receptors. Landscape receptors consist of "its specific aesthetic or perceptual qualities" (3.21). Those receptors are then subjected to an assessment which involves determining their sensitivity (value x susceptibility to the type of change proposed) and combining this with the magnitude of change which the proposed development would bring to produce a significance of effect (Figure 5.1 page 71).

4.18 Mr Dudley has identified key aesthetic and perceptual qualities and assessed the sensitivity and magnitude of change on each to provide a significance of effect in respect of each. He has then combined these to provide a significance of effect for the site and the setting of the site. This enables you, Inspector, to isolate the effect on Peel Common because Mr Dudley has assessed it as a separate receptor. It also provides transparency as to the effect of the proposed development on all the key aesthetic and perceptual qualities and the ability to see how these combine to look at the site and its setting. In contrast Mr Atkin has simply assessed the effect on the two relevant landscape character areas within the FLA.

4.19 Although in xx, Mr Dudley was questioned on his methodology, it being suggested that it led to double counting in relation to susceptibility and value, this was shown not to be the case (in rx Mr Dudley explained that susceptibility and value are separately assessed, in the tables the value is simply recorded in the corresponding susceptibility table and vice versa). In any event such questioning misses the point that the difference between the parties does not come from how they have each assessed value (in a broadly similar fashion) or how they have combined value and susceptibility, it simply comes from how susceptibility has been assessed.

Susceptibility to the change proposed

4.20 When comparing the two LVIAs it is clear that there is a lot of common ground. Both Mr Dudley and Mr Atkin lean heavily on the work of LDA Design in the FLA. Mr Atkin adopts the LCAs within this document to assess the development against and

only assesses them in this way with no other landscape receptors identified. Mr Atkin is also content with the assessment of sensitivity of the two relevant LCAs prior to the introduction of the Newgate Lane East Road. The key difference between LDA Ltd and Mr Dudley on the one hand and Mr Atkin on the other is the effect that this road has.

4.21 It is the assessment from within his LVIAs which Mr Atkin adopts in his proof and the relevant sections are the same for both sites. Within CDA48 at paragraph 6.26 Mr Atkin's LVIA notes that LCA 8.1a has "moderate to high" susceptibility, but as you have seen Mr Atkin accepts that this is incorrect and should read "high". At paragraph 6.34 Mr Atkin concludes that the value is now "low to medium" both for value and susceptibility resulting in a low to medium sensitivity when combined. The only reason given for the change is that the FLA was completed prior to the completion of Newgate Lane East - that this is the only reason is clear from a reading of 6.26 and 6.34. So, Mr Atkin has reduced the susceptibility of the landscape from "high" to "medium to low" based on the new road. The difficulty for him is that the effect of the road was expressly contemplated in the FLA as follows:

- Prior to the road at 153 it is concluded:

> *"The distinctive character of area 8.1a relies on this openness, its rural agricultural character and the absence of prominent urban features, and it would be difficult to accommodate significant new development without affecting these characteristics or altering the balance between a predominantly rural or predominantly urban landscape. So, overall, the sensitivity of the landscape resource within area 8.1a is judged to be high (moderate to high value and high susceptibility to change), with very limited capacity to accommodate development without significant impact on the integrity of the area's rural agricultural character."*

- This assessment is accepted by Mr Atkin, indeed he adopts this judgment within his LVIAs; furthermore the FLA is consistent with the 1996 assessment of Scott Wilson in relation to the arable character, need to maintain settlement separation and improve landscape quality (CDG13 discussed in Mr Dudley's proof at pages 21-22)

- The forthcoming construction of the road and its effect is then discussed also on page 153:

> *"However, the road corridor is relatively narrow and unaffected land within the rest of the area should be of sufficient scale to remain viable as farmland and to maintain its essentially rural character. Mitigation proposals include new hedgerow and tree planting along the route to reduce its visibility and impact on the landscape, and, if this is effective, the road itself may not have an overwhelming urbanising effect across the area as a whole in the longer term. However, significant further development in addition to the road scheme would almost certainly have this effect, potentially tipping the balance towards a predominantly urban character."*

- This is followed through into the development criteria on page 161 which notes:

> *"The situation is further complicated by the proposed new road which will have some effect on the integrity and character of the landscape resource and undeveloped gap. Even a small amount of encroachment of further built development within the area could exacerbate these effects to the point that the character of the whole area may be fundamentally altered."*

- This results in the development criteria that, to avoid urbanising the rural character, proposals will need to maintain significant distance and separation from the corridor of the new road (bullet 6).

4.22 So LDA have expressly considered the impact of the road and feel that area 8.1a would be more susceptible to the development proposed as a result of the road, or certainly not less susceptible, because further development in addition to the road could tip the balance from an essentially rural to a predominantly urban character. Mr Dudley agrees with this essential point and hence the receptors relating to the agricultural use and open character, the site and the setting of the site within his proof are assessed as having high susceptibility.

4.23 Mr Atkin's approach of dropping the susceptibility from high to low/ medium based on the road alone is simply not credible. The true effect will be apparent from a site view taking in Mr Dudley's viewpoints, for example 6 and 23. It is unclear why Mr Atkin, having agreed with LDA up until the construction of the new road takes such a

different view of its affect. It is submitted that he is wrong to do so. His discussion of the road as creating a "pocket" within which the development would sit, it is submitted merely served to emphasise the urbanising effect the development would have in connection with the road, tipping the balance to a predominantly urban environment, just as LDA, Mr Dudley and residents supported by the likes of Councillor Forrest fear.

4.24 When Mr Atkin's susceptibility assessment is corrected to accord with that of LDA and Mr Dudley (high) it is apparent that both parties would in fact assess sensitivity in a similar way and thus the significance of impact on relevant receptors when combined with magnitude of change would become high. Perhaps the reason for Mr Atkin failing to recognise the effect of the road is that his susceptibility table in the LVIAs (on page B-6) is rigidly drawn and prevents an assessment of "high" based upon development triggering a tipping point from a predominantly rural to a predominantly urban landscape - one can only tick the high box if detracting features are not present or their influence is limited.

4.25 Finally, it is submitted that Ms Parker is right to state that the FLA should be afforded greater weight than an LVIA produced for a planning appeal, given its production as part of the evidence base for the Local Plan and the consultation described in her note. But even if this were not the case, LDA are a reputable firm of landscape consultants and their judgment on landscape sensitivity as expressed in the document should attract significant weight. Indeed, as already explained, Mr Atkin does not dispute this, he has used the LCAs as receptors for his LVIA and agrees with the assessment of sensitivity within the FLA. He takes issue with the judgment on the effect of the new road, but he differs from both LDA and Mr Dudley in that respect.

4.26 As already noted in respect of views, Mr Dudley is correct to note that there would be an impact on views around the site, particularly from Newgate Lane and Woodcote Lane, of major and moderate-Major significance of effect. To that extent the residents such as Aimee White from Woodcote Lane are right to complain that views affecting them have been labelled as not significant. GLVIA3 enables these representative views to be considered. Nor does development outside of a settlement boundary necessarily have such an effect (as Mr Atkin intimated); it is the scale, location away

from the settlement boundary and design of the proposed development being of a sub-urban perimeter block design which results in the adverse views Mr Dudley and Mr Atkin describe.

Sensitive Design – the first part of DSP40(iii)

4.27 A separate requirement of policy DSP40(iii) is the need to sensitively design a proposal to reflect the character of the neighbouring settlement. It is agreed by the parties that neighbouring settlement in (iii) refers to both Peel Common as a neighbouring settlement and Bridgemary, whereas DSP40(ii) (discussed later in these submissions) can only refer to Bridgemary because of the reference to a settlement boundary.

4.28 This first part of DSP40(iii) needs to be considered alongside CS17 as that policy requires all development to "*be respectful of the key characteristics of the area*". This element of DSP40(iii) was considered to be determinative in the *Burridge Road* decision (CDJ2), in which Inspector Parker dismissed the appeal because the development would introduce "*a form of development which is discordant with the existing pattern of housing in Burridge Road*" (paragraph 11) with the result that the development was not "*respectful of the key characteristics of the area and sensitively designed to reflect the character of the neighbouring settlement*" as required by DSP40 read with CS17 (paragraph 12).

4.29 The character of Peel Common is addressed within the FLA (CDG15) throughout LCA 8. The development criteria and enhancement opportunities for area 8.2 include at the 3rd bullet:

> *"Maintain the distinctly "isolated" nature of the settlement of Peel Common and ensure that any small scale infill development within this area effectively "rounds off" rather than extends the settlement boundary to avoid the risk of physical or perceived coalescence with other built areas."*

4.30 This underlines the fact that Peel common is a small, isolated settlement. A consequence of the fact that the appeal sites are separated from the settlement boundary of Bridgemary by countryside, is that the proposed appeal sites in fact lie

closer to Peel Common, albeit they would be separated from this settlement too by the river valley.

4.31 Mr Dudley has assessed the relationship with wider settlements as a specific landscape receptor. This means that his LVIA can be used to gauge the impact on Peel common and Bridgemary as opposed to simply assessing the impact on the character area as a whole. Mr Dudley recognises the identification of Peel Common within the FLA as an "isolated small settlement that lies within the wider gap" and agrees with that judgment (PoE 5.44). He also recognises the urban edge of Bridgemary as being defined by a row of trees in this location which "Provides a strong definition of the edges of urban areas" and "marks a clear distinction between town and country" which "helps to reinforce the separate identity of each settlement and also provides the urban areas with an attractive, essentially rural setting". (PoE 5.46). It is against that backdrop that he assesses susceptibility to change of this receptor as medium, value medium and the magnitude of change of the proposed perimeter block design of urban design presenting hard faces to the surrounding countryside as high for both proposed developments. This results in an adverse impact of Major/ moderate significance for both (5.52-3 and 5.54-5).

4.32 Mr Atkin has carried out no such assessment and Mr Weaver specifically accepted in xx that if you accept Mr Dudley's conclusion at 5.54 of his PoE there would be a breach of DSP40(iii). This best evidence demonstrates that the proposals would respect neither the settlement of Peel Common nor that of Bridgemary.

## 5. Impact on the Strategic Gap

5.1 CS22 states that development will not be permitted where it "significantly affects the integrity of the gap". DSP40(iii) requires that adverse impact on the Strategic Gap is minimised. The context of DSP40(iii) is set by DSP40(ii) which requires that development should be located adjacent to and be well related and integrated with the settlement boundary. As a result of the recent Technical Review (CDG7), not only is it the case that the appeal sites are currently sited within the Gap and subject to the attendant policy constraints, but you are also in possession of an evidence based draft Local Plan document which has been published for consultation over a six week period (from 6 November to 18 December last year) which indicates that this part of the Gap is valued and not proposed to change.

5.2 The key difference between the parties on this issue became apparent in the evidence of Mr Atkin in which he repeatedly emphasised that the strategic gap would be unaffected by the development because, when travelling east to west across it, the gap would only reduce from 1.6 to 1.1km and the appeal sites would not be visible from the area of the gap to the west. His position was predicated upon the area to the gap to the west of Peel Common being of no value to the integrity of the gap because you could not see it from the east and vice versa. On that basis, having a large urban extension, with a perimeter block design filling the appeal sites and tripling the size of Peel Common was of no consequence to him (see also his PoE at 4.75).

5.3 The reality is that the gap is not simply experienced by those traveling east to west and vice versa. The recent Review of the Gap (CDG7) contains a strategic gaps overview. As Ms Parker emphasised, at page 87 of the document key vehicle routes between settlements to "experience" the strategic gaps are identified. One of those key routes is the Newgate Lane East road between Fareham and Peel Common. Which, should the proposed development be allowed, would run directly past it. The development sites are within Gap Study Area 8c (page 86) and this area is addressed at paragraph 17 on page 100, the last sentence of which provides:

> *"The GI Strategy of framework should reassess the Open Coastal Plain Landscape Type: with a view to creating stronger GI structure throughout, but highlighting and retaining long North-South views, and largely undeveloped views eastwards from Old Newgate Lane, to retain a sense of space and "big skies".*

5.4 This demonstrates that the appeal site is within an essential part of the gap which is particularly noted as allowing largely undeveloped views eastwards (such as Mr Dudley's VP6). In this context the evidence of Councillor Forrest resonates:

> *"The value of the Peel Common Landscape, and views beyond it stretching towards Titchfield, also includes the sense of place it offers. Travellers between Fareham and Stubbington or Lee leave behind an urban landscape at HMS Collingwood and the Speedfields retail park. They pass through countryside surrounding a largely unspoiled hamlet, before returning to an urban fringe landscape at Solent Airport.*
>
> *This part of the Strategic Gap, as well as being an area to enjoy leisure times, gives residents on either side of it a real sense of their distinct communities. A modern estate set down in the heart of it would damage it irreparably."*

5.5 The reality is that, as Mr Dudley and Ms Parker emphasised, locating an urban perimeter block style of development on the appeal sites would significantly harm the integrity of the gap. The very fact that it would tip the balance from a predominantly rural to predominantly urban character is inimical to the objects of the gap. The current construction of the Stubbington bypass and the impact that necessarily has on the part of the gap through which it runs to the west of Peel Common can only serve to make those parts of the gap to the east, which are expressly referred to within the 2020 review, more valuable and thereby the impact of the proposed development more significant.

## 6. DSP40(ii) Whether the development would comprise a logical extension of the settlement boundary

6.1 It was agreed with Mr Weaver in xx that policy DSP40(ii) has three elements:
(1) The proposal is sustainably located (which is the subject of the next section);
(2) It is adjacent to the existing urban settlement boundary;
(3) It is well related to and well integrated with the neighbouring settlement boundary.

Adjacency

6.2 Mr Weaver agreed that the literal meaning of adjacent is whether two things are next to each other. It follows that if there is a piece of land in between the development site and the urban settlement boundary they cannot be adjacent to each other.

6.3 In the *Whistlers appeal* (CDJ24) provided by Mr Weaver it was determined that gates and piers set 2 metres back from the highway were still adjacent to it. The ratio of that decision is to be found at paragraph 18: the piers and gates would still "*be perceived as being part of the main boundary between the highway and the Appellant's property*." Inspector Wharton concluded that a set back of 2 metres would not prevent the piers and gates from being perceived as being the boundary between the highway and the Appellant's property. In those circumstances the piers and gates, being part of the boundary, were adjacent to the highway.

6.4 Mr Weaver sought to distance himself from this case in xx, but he accepted that the correct test encompassed perception. He stated in xx that, in all the cases discussed in his evidence in chief and xx: Egmont nurseries (shown in Ms Parker's Appendix 4 to her further rebuttal proof), Funtley (shown in Ms Parker's appendix H2 to her November rebuttal) - both also shown in his Settlement Boundary Plan (ID 17B), and 125 and 79 Greenway Lane (shown in Ms Parkers appendix H1 to her November Rebuttal), the development site was not adjacent to the settlement boundary, but one

had to apply the requirement with flexibility. However, when applying that flexibility he accepted that the proposed development and the settlement boundary would need to be perceived as being next to each other.

6.5 That concession is sufficient to determine the issue of adjacency. The appeal sites and settlement boundary would not be perceived as next to each other. A cursory consideration of the VPs in the landscape witnesses' evidence demonstrates that. The appeal sites are not next to the settlement boundary because there is intervening countryside between them and Bridgemary. The situation is less clear in a case where the gap between a development site and the boundary has been built on. But, although the wording of the committee reports for the Greenaway Lane applications is unclear (Mr Weaver's Appendices 4 and 5), the reality is that even Mr Weaver in xx did not hold to the view that this meant that those sites were adjacent to the settlement boundary. Rather his view was that a flexible approach had been taken to the criteria. It is submitted that what the Council has done in those cases is determine that the substance of the policy has been complied with because intervening built development lies between the application sites and the settlement boundary. Mr Weaver accepted that this was the relevant context in respect of 125 Greenaway Lane, as explained by Ms Parker at 5.10 of her November rebuttal with reference to paragraph 1.6 of the officer report at Mr Weaver's appendix 4. From Appendix H1 it is clear that this was also the relevant context for 79 Greenaway. That is not the case for the application sites the subject of this appeal.

<u>Well related to and well integrated with the settlement boundary</u>

6.6 The fact that the appeal sites are not adjacent to the settlement boundary, rather they are separated from it by intervening countryside has multiple consequences. It puts the development in breach of DSP40(iii) because of its location in an isolated pocket of development which harms the character of Peel Common and Bridgemary, as already discussed in section 3 of these submissions. It means that the proposed development would have a harmful effect on the integrity of the strategic gap as discussed in section 4. This location means that the development cannot comply with

the requirement to be adjacent to the settlement boundary, as set out above, but it also has implications for the next requirement – the need to be well related to and well integrated with the settlement boundary.

6.7 In xx Mr Weaver accepted that the use of the word "well" in respect of related and integrated indicates the degree that a proposed development site must be able to relate to the settlement boundary; the relationship must not be poor or neutral it must relate to a high standard and integrate to a high standard.

6.8 Mr Weaver also accepted both that "one test" of whether a site was well integrated and well related was whether it would form a logical extension to the settlement boundary, and that the presence of intervening countryside was relevant to whether a site would provide a logical extension. This concession reflected the wording used within both the SEA to the Regulation 18 draft of the Local Plan (CDG11) at 4.4.10 and the SEA to the Regulation 19 Local Plan (CDG12) at 4.5.8 the objectives of the preferred development strategy include:

> *"A preference towards urban extension sites that provide a logical extension to the existing urban area and/or a defendable urban edge for the future."*

6.9 The appeal sites were considered by the Council (Appendix G) in both documents and were rejected on the basis that:

> *"site does not provide a logical extension to the urban edge as it will sit on the west side of the Newgate Lane south relief road and will intrude into the strategic gap."*(CDG11)
>
> And
>
> *"the development in this location would not be in keeping with the settlement pattern"* (CDG12)

6.10 This indicates that an urban extension site will relate well and integrate well with the adjacent settlement boundary if it provides a logical extension to the existing urban area and/ or provides a defendable urban edge for the future. In such cases it will be in keeping with the settlement pattern. The appeal sites cannot do this because they are

separated from the settlement boundary by countryside and comprise an isolated pocket of development away from Bridgemary.

6.11 In his cx Mr Weaver also expressed the test in DSP40(ii) in this way, whether the appeal sites "can become part of that (Bridgemary) settlement". When asked in xx whether he stood by this as a test of whether proposed development would be well integrated and well related or whether he resiled from it, Mr Weaver confirmed that he stood by it. He was right to do so. Integrate means to combine two things together so that they form a whole. To do this "well" means to do this to a high standard. However, when looked at in this way it is clear that the appeal sites would not combine to form a whole with the settlement of Bridgemary - because they are separated from it by countryside.

6.12 So, to conclude at this point, Inspector, the appeal sites would not be perceived as next to Bridgemary, nor would they provide a logical extension to it. They would not combine to form a whole with Bridgemary. This is because of the presence of intervening countryside, the presence of the Newgate East Road and the protrusion of the appeal sites into the strategic gap. An additional consequence of the appeal site's location is that there is a loss of agricultural land which both parties agree is an adverse impact to be added into the planning balance, albeit one of minor or limited weight.

## 7. Accessibility

7.1 The remaining issue is whether the proposed development would be placed in a location which provides appropriate opportunities to promote sustainable transport modes which can be taken up.

7.2 CS5 provides that proposals which generate significant demand for travel and/or are of a high density, must be located in accessible areas (including access to shops, jobs, services and community facilities as well as public transport) that are or will be well served by good quality public transport.

7.3 From the above it follows that in the context of the Development Plan and the Framework, whether the site is sustainable located in relation to accessibility to services and facilities can be phrased as follows:

> Does the site constitute an accessible area (which includes consideration of access to shops, jobs, services and community facilities as well as being well served by public transport), which is sustainably located such that appropriate opportunities for sustainable transport modes can be taken up?

CIHT Guidance

7.4 It should be noted at the outset, Inspector, when you come to weigh the evidence of Ms Parker and Mr Jones on this issue, that Mr Jones gave evidence in cx as follows:

> *"Accessibility is not a tick box exercise. You apply the CIHT guidelines. You look at the minimum. If it passes fantastic. But it allows flexibility. It is not the be all and end all."*

7.5 When asked in xx why, given that his first step was to apply the CIHT guidelines, he had neglected to mention them in his evidence, Mr Jones said he had made a conscious decision not to do so. With respect, it is simply incomprehensible why Mr Jones has not mentioned the guidelines in these circumstances. Had Ms Parker not

mentioned them, the reality is that they would not be before the inquiry and you would not have been in a position to determine whether they were met and what flexibility should be applied.

How people will actually travel

7.6 Whether people travel in a sustainable fashion depends on where they live in relation to the places they wish to travel to. As made clear in the 2000 CIHT guidance (paragraph 3.31 on page 48 (CDH12)), guidance the purpose for which the trip is made is also important. This is because those carrying shopping or pushing pushchairs back from a shopping trip will be prepared to walk a shorter distance than those commuting to work. Similarly, the distance someone walking to work is prepared to walk will differ from that of someone walking to other facilities.

7.7 Mr Jones claimed in rx that he had looked at the purpose of journeys in his table 2 (PoE page 21) because he has listed facilities under headings commuting, shopping etc. But what he has not done is take account of the fact that the purpose of a journey directly impacts the distance someone is prepared to walk. Mr Jones' columns comparing the walking and cycling time to the NTS average does not assist because it does not assist you, Inspector, with what the distance someone will be prepared to walk to the particular facility listed and whether the facility is within that distance. The fact that Mr Jones has not assessed journey purpose against the distance someone is prepared to walk to that facility, in circumstances where the primary piece of guidance advises that this is done, fundamentally undermines his assessment of how far people are prepared to walk and thus how sustainable the site is.

7.8 Inspector Gould's decision in the *Portchester* appeal (CDJ1) demonstrates the following:

(1) The CIHT2000 guidance is the appropriate guidance to determine whether key facilities and destinations are within an accessible walking distance (paragraph 16);

(2) The CIHT2000 guidance is not out of date because individuals' attitudes to walking trip lengths have not altered appreciably since 2000 (paragraph 17);

(3) Had the CIHT2000 guidance been out of date the CIHT could be expected to have revised them, the fact that instead the CIHT have cross referenced to the CIHT2000 in sections 4 and 6 of the 2015 Guidance (CDH11) indicates they have currency (paragraph 18);

(4) Setting an upper ceiling which applies to all trips (such as Mr Jones does with a 2km cut off) is an approach which should be treated with caution (paragraph 19).

7.9 Simply because a site cannot comply with every guideline does not make it unsustainable, sustainability is a matter of judgment for you, inspector. Just as accessibility for the fraction of the public who cycle does not make it sustainable. However, the evidence of Ms Parker demonstrates that, following a careful assessment of which CIHT distance is appropriate (acceptable), the site is fundamentally unsustainable.

7.10 Mrs Parker sets out the CIHT guidance on walk distances to facilities and bus stops within her revised Appendices 2, 3 and 4. Given the Appellant accepts that the Southern site could come forward in isolation, but the Northern could not, it is Appendix 3 and 4 which are relevant. Ms Parker also explained that the relevant distance to a railway station is 800 metres as set out on page 30 of the 2015 guidance (CDH11) under paragraph 6.4. She has assessed journeys by purpose and applied a graded cut off relying on the three sets of CIHT guidance. In her proof she has assessed the routes north, south, east and west (although she explained in chief that given the distances and offer it is only the routes to the north and east which contain facilities which require consideration).

7.11 Below I have produced the table in CDH12 below for ease of reference:

| **Table 3.2 provides guidance on acceptable walk distances.** | **Town Centres (m)** | **Commuting/School/Sight-seeing (m)** | **Elsewhere (m)** |
|---|---|---|---|
| Desirable | 200 | 500 | 400 |
| Acceptable | 400 | 1000 | 800 |

| | | | |
|---|---|---|---|
| Preferred Maximum | 800 | 2000 | 1200 |

**(CIHT Providing for Journeys on Foot (2000))**

7.12 This guidance sits alongside the 2015 guidance that: "*Most people will only walk if their destination is less than a mile away.*" (Paragraph 6.3, page 29 of the 2015 guidance at CD11)

7.13 When the CIHT guidelines are used to assess sustainability of the site it can be seen from a cursory glance at Ms Parker's tables when read together with her proof that for the South site (standalone) and the linked sites, that the only destinations within the acceptable distance are Peel Common Church, Brookers Field and Peel Common primary school. For the linked sites, no bus stop is within the CIHT (2018) guideline distance (CDH13 page 18 – Mr Jones accepted that Ms Parker had calculated the 300 metre distance correctly in respect of these criteria) and no railway station is within 800 metres.

7.14 Mr Jones' approach was to state that you could not pick up the site and move it, nor could you move the railway station. But this simply serves to emphasise that (to use the words from his summary at paragraph 5.7) Mr Jones is not correct to assert that the appeal sites "*are suitably placed to provide realistic sustainable transport choices*". The fact that travel plan measures have been agreed cannot change the fundamental unsustainability of this site for the development proposed.

7.15 Mr Jones has used the Walking Route Audit Tool (WRAT) criteria within his evidence to grade the routes around the appeal sites, but this ignores the fact, as Ms Parker explained, that the WRAT should be used to identify where improvements are required on a route (JP November rebuttal appendix E). It cannot and does not purport to assist in determining whether people will actually walk to facilities along a route because that depends upon the particular facility and the distance it lies from the point of origin. In any event Ms Parker in her November rebuttal and in cx explained that Mr Jones had made errors in his WRAT assessment which meant that the routes did not score more than the 28/40 point cut off.

7.16 Finally, whilst recognising that Inspector Gould had found the CIHT2000 guidelines to be the current guidance to assess walking distances, Mr Jones stated that he relied upon paragraph 80 of that decision. In paragraph 80 the Inspector found that there would not be an unreasonable level of accessibility despite noncompliance with the CIHT guidelines. As Ms Parker explained however, this was because of the particular circumstances of that case as explained at paragraph 79. Those circumstances do not apply here. At Downend Road Inspector Gould noted that the development would be close to "many other dwellings" with a similar accessibility to local services and facilities, that is not the case at Newgate Lane where the appeal sites are split away from the settlement boundary with Bridgemary, and the main relationship is with the isolated settlement of Peel Common. Inspector Gould noted that given the existing pattern of development in Porchester there would be few opportunities which would be more accessible than the appeal site, whereas in respect of the current appeals, the site of the previous allocation HA2 is clearly more accessible. Finally, the Inspector noted that the Council was considering allocating the site for development in any event, that is obviously not the case at Newgate Lane.

7.17 It is submitted that the above analysis shows that the appeal site is fundamentally unsustainable on accessibility grounds.

## 8. Planning Balance

8.1 It is submitted that the proposed development would give rise to a "true safety issue" in which circumstances all parties are agreed that the appeals should be dismissed, and permission refused.

8.2 In any event the planning balance carried out by Ms Parker in her proof of evidence provides the correct approach for you, Inspector, on these appeals.

8.3 In particular Ms Parker has carried out her balance in accordance with the policy framework set out in section 2 above. She has correctly assessed the weight you should give to policy and in particular she has recognised the that the proposed development is in fundamental 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 in circumstances where there is a five year supply shortfall. It is manifestly correct and consistent with the *Portchester*, *Posbrook Lane* and *Land West of Old Street* appeals that DSP40 should be afforded full weight and very significant weight should be afforded to conflict with it.

8.4 When this harm is considered it significantly and demonstrably outweighs the benefits, principally the weight afforded to additional housing, including affordable housing and related economic benefits.

8.5 For the above reasons the appeals should be dismissed.

**David Lintott**
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25/02/21