

**FAREHAM BOROUGH COUNCIL**

**Section 78, TOWN & COUNTRY PLANNING ACT 1990**

**STATEMENT OF CASE**

**FAREHAM BOROUGH COUNCIL  
(The LOCAL PLANNING AUTHORITY)**

**LAND EAST OF DOWN END ROAD, FAREHAM  
HAMPSHIRE**

**Appellant: Miller Homes**

**LPA Ref: P/20/0912/OA**

**PINS/Ref: APP/A1720/W/21/3272188**

**3 June 2021**

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## 1.0 Introduction

- 1.1 This Statement of Case (SoC) sets out Fareham Borough Council's (the 'Council's') case in respect of an appeal made by Miller Homes (the 'Appellant') against the Council's refusal of outline planning permission for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities (the 'Appeal Development').
- 1.2 The Planning Inspectorate ('PINS') has confirmed that the Appeal will be heard via the Inquiry procedure with the inquiry taking place from 3<sup>rd</sup> August to 6<sup>th</sup> August 2021.
- 1.3 In advance of the inquiry, the Council will seek to agree one or more Statements of Common Ground and a Core Document list with the Appellant. It will also work with the Appellant to seek agreement on conditions and a Section 106.
- 1.4 The Council's evidence will address the reasons for refusal and will include reference to case law, appeal decisions and other materials relevant to its case.
- 1.5 This SoC is structured as follows:
- **Section 2 – Appeal Development:** Provides a description of the Appeal Development
  - **Section 3 – Appeal Site and Surrounding Area:** Provides a description of the Appeal Site and surrounding area
  - **Section 4 – Reasons for Refusal:** Describes the Reasons for Refusal
  - **Section 5 – Relevant Planning History:** Describes the previous planning application along with the outcome of the associated appeal
  - **Section 6 - Relevant Policy Framework:** Sets out the relevant national and local policy framework
  - **Section 7 – Weight to be Afforded to adopted Development Plan Policies:** Sets out how adopted policies should be treated in the absence of a five-year housing land supply.
  - **Section 8 – The Council's Case:** Sets out the Council's case with specific regard to the reasons for refusal, the development plan policy conflicts and the planning balance.

- **Section 9 – Planning Conditions and s106:** Addresses conditions and Section 106 planning obligations.
- **Section 10 – Witnesses:** Sets out the Council’s anticipated Expert Witnesses.

## **2.0 Appeal Development**

2.1 The Appeal Development is described on the decision notice dated 25<sup>th</sup> November 2021 as follows:

*'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities.'*

2.2 Outline planning permission was sought for up to 350 dwellings on the site. The means of access to the development is sought for approval with all other matters reserved.

2.3 Also proposed is the provision of communal amenity space, public open space and associated works.

2.4 The application was accompanied by a landscape parameter plan setting out areas of open space, attenuation features, existing landscaping to be retained and other areas of constraint.

2.5 There is one proposed vehicular entrance to the site via Down End Road (at the site's western extent) which would also provide pedestrian and cycle access. Two further pedestrian and cycle access points are proposed, one to the south of the site via Cams Bridge (an existing private access) and one to the east providing a link to the existing public footpath at Upper Cornaway Lane.

2.6 Planning permission has been granted under P/18/0001/OA for improvement works to Cams Bridge.

2.7 The application sought to resolve the concerns of the inspector regarding pedestrian access over the bridge on Down End Road through a revised mitigation package. The Improvements have been proposed within the TA and shown on drawing ITB12212-GA-051D in the form of traffic signal shuttle working. This proposes a 2m wide footway [on the northern/western side of the bridge] and single carriageway [3.5m wide] working on the railway bridge controlled by traffic signals. Pedestrian crossings are provided to either side of the bridge. These are not linked in with the bridge traffic lights.

### **3.0 Appeal Site and Surroundings**

- 3.1 The 'Appeal Site' comprises the land edged-red on the submitted Site Location Plan.
- 3.2 The Appeal site is located on the slopes of Portsdown Hill north of the Portsmouth to Southampton railway line which forms the development's southern boundary.
- 3.3 The site comprises agricultural land and paddocks with farm buildings at its centre.
- 3.4 The site is in the countryside and lies outside of the urban settlement boundary as defined in the adopted local plan. To its east is Portchester Crematorium and the Memorial Gardens whilst to its north-west is an open-air waste facility. Close by on the eastern side of Down End Road is a small group of residential and commercial properties.

## 4.0 Reasons for Refusal

### Officer Recommendation

- 4.1 The planning application (LPA ref. P/20/0912/OA) was subject of an officer recommendation for permission as detailed in the Committee Report [FBC.1] and Update Report [FBC.2] dated 18<sup>th</sup> November 2021.

### Planning Committee Decision

- 4.2 The Planning Committee resolved to refuse planning permission at the planning committee on for the reasons set out below.

### Reasons for Refusal

- 4.3 The decision of the Local Planning Authority to refuse planning permission was issued on 25<sup>th</sup> November 2021. The reason for refusal is listed in the Decision Notice and copied below for ease of reference:

*'The development would be contrary to Policies CS5 of the adopted Fareham Borough Core Strategy 2011 and Policy DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and paragraphs 109 and 110(c) of the National Planning Framework, and is unacceptable in that:*

*The proposal would result in a material increase in vehicular and pedestrian movements along Down End Road across the road bridge over the railway line. The works to the bridge as shown on drawing no. ITB12212-GA-051D (titled "Downend Road Bridge – Proposed Signal Arrangement With Footway General Arrangement") would unacceptably affect the operation of the highway because of the vehicle queuing and driver delay that would arise and would result in unacceptable harm to the safety and convenience of users of the highway. Furthermore the application does not make acceptable pedestrian crossing provision on Down End Road for future residents of the development.'*

- 4.4 An informative on the decision notice read as follows:

*'Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address matters relating to the provision of public open space, off-site highway and public rights of way works, improvements to Cams Bridge (as proposed by application reference P/18/0001/OA), pedestrian and cycle access, travel plan, Asset Protection Agreement with Network Rail, affordable housing and matters requiring financial contributions towards the Solent Recreation Mitigation Strategy (SRMS), education provision and school travel plans by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.'*

- 4.5 The decision taken by Members is recorded in minutes of the meeting (FBC.3).
- 4.6 Whilst not listed in the Informative, the Local Planning Authority will also wish to secure Nitrogen neutrality through either a legal agreement or planning condition[s].

## 5.0 Relevant Planning History

### The 2018 Planning Application

- 5.1 Miller Homes submitted an outline planning application (P/18/0005/OA) with all matters reserved except for the means of access for:

*Demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities.*

- 5.2 Whilst there was officer recommendation to Permit the scheme the proposal was refused by Fareham Borough Council's Planning Committee (decision issued on 26 April 2019).

- 5.3 The application was refused for the following reasons:

*"The development would be contrary to Policies CS5 of the adopted Fareham Borough Core Strategy 2011 and Policy DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan and is unacceptable in that:*

1. a) *The proposal would result in a material increase in pedestrian movements along Down End Road across the road bridge over the railway line. The works to the bridge as shown on drawing no. ITB12212-GA-003 Rev B (titled "virtual footway proposal") and the works to the bridge as shown on drawing no. ITB12212-GA-004 Rev B (titled "reduced width formal footway") would provide inadequate footway provision to ensure the safety of pedestrians using the bridge and other highway users. The works to the bridge as shown on drawing no. ITB12212-GA-011 Rev B (titled "priority shuttle working") would result in unacceptable harm to the safety and convenience of users of the highway.*
2. b) *The application site is not sustainably located in terms of access to local services and facilities."*

### The Subsequent Planning Appeal

- 5.4 Miller Homes subsequently appealed the decision (ref: APP/A1720/W/19/3230015), with an inquiry held from 24 and 26 September 2019. The Inspector's decision was issued on 5 November 2019, with the appeal being dismissed.

- 5.5 In considering the appeal, the Inspector concluded (paragraph 97) that the options proposed for the Downend Road railway bridge would either make inadequate provision for pedestrian access, or would unacceptably effect the operation of Downend Road as a result of vehicle queuing and driver delay. The Inspector identified that these impacts would be unacceptable and in conflict with

the development plan; Policy CS5 of the *Core Strategy* and Policy DSP40 of the *Development Sites and Policies (DSP)*.

5.6 In concluding (paragraph 100), the Inspector stated that the development proposal would lead to:

*“... unacceptable harm to pedestrian safety and the operation of the public highway that... could not be addressed through the imposition of reasonable planning conditions... in the overall planning balance... the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.”*

5.7 It is material consideration that in reaching his decision, the Planning Inspector also concluded that:

- The accessibility to local services and facilities other than by private motor vehicles would not be unreasonable and weighs in favour of the social benefits of the development, thereby rejecting the second reason for refusal
- The development could be implemented to safeguard the integrity of off-site designated habitats, having a neutral effect on the natural environment
- The development would lead to significant social and economic benefits arising from the construction and occupation of up to 350 dwellings
- The development would provide a boost to the supply of market and affordable homes within Fareham Borough
- Whilst there would be some harm to the setting of nationally designated heritage assets, this would be less than substantial, and would be outweighed by the social and economic benefits of the development.

## **6.0 Relevant Policy Framework**

- 6.1 By Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine applications for planning permission in accordance with the provisions of the development plan unless material considerations indicate otherwise. This Section of the SoC sets out the relevant planning policy framework for the consideration of this appeal.
- 6.2 The policies detailed within the Council's reasons for refusal (RfR) are detailed within this Section. Where the policies are considered particularly relevant to this Appeal they are outlined in more detail.

## **The Development Plan**

- 6.3 The development plan relevant to the consideration of this appeal comprises the following documents:
- Local Plan Part 1: Fareham Borough Core Strategy– Adopted 4th August 2011
  - Local Plan Part 2: Development Sites and Policies– Adopted 8th June 2015
  - Local Plan Part 3: The Welborne Plan – Adopted June 2015
- 6.4 The development plan policies that are referenced in the Council's Planning Committee report as being relevant for the Application are as follows:

### **Adopted Fareham Borough Core Strategy**

CS2: Housing Provision

CS4: Green Infrastructure, Biodiversity and Geological Conservation

CS5: Transport Strategy and Infrastructure

CS6: The Development Strategy

CS14: Development Outside Settlements

CS15: Sustainable Development and Climate Change

CS16: Natural Resources and Renewable Energy

CS17: High Quality Design

CS18: Provision of Affordable Housing

CS20: Infrastructure and Development Contributions

CS21: Protection and Provision of Open Space

### **Adopted Development Sites and Policies**

DSP1: Sustainable Development

DSP2: Environmental Impact

DSP3: Impact on Living Conditions

DSP4: Prejudice to adjacent land

DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries

DSP13: Nature Conservation

DSP14: Supporting Sites for Brent Geese and Waders

DSP15: Recreational Disturbance on the Solent Special Protection Areas

DSP40: Housing Allocations

### **Other Documents**

Residential Car and Cycle Parking Standards Supplementary Planning Document (November 2009)

Design Guidance Supplementary Planning Document excluding Welborne (Dec 2015)

Planning Obligation SPD for the Borough of Fareham (excluding Welborne) (April 2016)

- 6.5 Whilst not specifically cited in the committee report, Policy DSP5 of LP2 is considered relevant as it deals with Protecting the Historic Environment.
- 6.6 Policy DSP5 along with the policies found to be breached in the Council's reasons for refusal, which are CS5 of LPP1 and DSP40 of LPP2, are addressed in more detail below.

### ***Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011***

- 6.7 The Local Plan Part 1 (LLP1) was adopted on 4th August 2011. The following policies were listed in the Reasons for Refusal and are relevant to the determination of this appeal:

- Policy CS5 - Transport Strategy and Infrastructure

- 6.8 **Policy CS5** (Transport Strategy and Infrastructure) states in part:

*'The Council will, where necessary work with the Local Highways Authority, Highways Agency and transport operators to promote, permit, develop and/or safeguard a high quality and sustainable integrated transport system for the Borough. This will include the following measures:*

*1... [This part of Policy CS5 is not considered relevant to this Appeal]*

*2. Development proposals which generate significant demand for travel and/or are of a high density, will be located in accessible areas that are or will be well served by good quality public transport, walking and cycling facilities.*

*3. The Council will permit development which:*

- *contributes towards and/or provides necessary and appropriate transport infrastructure including reduce and manage measures and traffic management measures in a timely way;*
- *does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes;*
- *is designed and implemented to prioritise and encourage safe and reliable journeys by walking, cycling and public transport.'*

### **Local Plan Part 2: Development Sites and Policies – Adopted 8th June 2015**

6.9 The Local Plan Part 2 (LPP2) was adopted on 8th June 2015. The following policies were listed in the reasons for refusal and are relevant to the determination of this appeal:

- Policy DSP40 - Housing Allocations

6.10 **Policy DSP40** (Housing Allocations) states in full:

*'The sites set out in Appendix C, Table 8 and shown on the Policies Map are allocated for residential development and should be developed in line with the principles set out in their respective Development Site Briefs.*

*Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site is listed in Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.*

*All sites listed in Appendix C will be safeguarded from any other form of permanent development that would prejudice their future uses as housing sites to ensure that they are available for implementation during the plan period.*

*Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:*

- i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii) The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii) The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps.*

- iv) *It can be demonstrated that the proposal is deliverable in the short term; and*
- v) *The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

6.11 **Policy DSP5** (Protecting and Enhancing the Historic Environment) states in full:

*Designated and non-designated heritage assets are an irreplaceable resource that will be conserved in a manner appropriate to their significance, to be enjoyed for their contribution to the quality of life of this and future generations. The wider social, cultural, economic and environmental benefits of their conservation will also be taken into account in decision making.*

*Development affecting all heritage assets should have regard to relevant guidance, including (but not limited to) the Design Supplementary Planning Document.*

*Proposals that provide viable future uses for heritage assets, that are consistent with their conservation, will be supported.*

*In considering the impact of proposals that affect the Borough's designated heritage assets, the Council will give great weight to their conservation (including those that are most at risk through neglect, decay, or other threats). Harm or loss will require clear and convincing justification in accordance with national guidance. Substantial harm or loss to a heritage asset will only be permitted in exceptional circumstances.*

*Listed Buildings will be conserved by:*

- a) supporting proposals that sustain and where appropriate enhance their heritage significance;*
- b) refusing to permit demolition, changes of use, or proposed additions and/or alterations that would unacceptably harm the building, its setting or any features of special architectural or historic interest which it possess; and*
- c) ensuring that development does not harm, and if desirable, enhances their settings.*

*Development affecting a conservation area will be permitted where it preserves or enhances its character, setting and appearance, and*

- a) takes account of the relevant Conservation Area Character Appraisal and Management Strategy;*

*b) does not involve the loss of important features of an individual building that contribute to character and appearance of the conservation area and/or its setting;*

*c) its form, bulk, scale, height, massing, alignment, proportion, material, building form and use are appropriate, including having regard to the surrounding buildings, spaces and views; and*

*d) it does not involve the demolition or partial demolition of a building or structure that positively contributes to the area, without clear and convincing justification.*

*The Council will conserve Scheduled Monuments, and archaeological sites that are demonstrably of national significance, by supporting proposals that sustain and where appropriate enhance their heritage significance. Proposals that unacceptably harm their heritage significance, including their setting, will not be permitted.*

*Non-designated heritage assets including locally listed buildings, historic parks and gardens, and sites of archaeological importance will be protected from development that would unacceptably harm their Architectural and historic interest, and/or setting taking account of their significance.*

### **Local Plan Part 3: The Welborne Plan – Adopted June 2015**

6.12 The Welborne Plan (LPP3) is the third part of the Council's Local Plan and was adopted in June 2015.

6.13 The LPP3 is a site-specific plan which sets out how the new community of Welborne, to the north of the M27 Motorway at Fareham, should take shape over the period to 2036.

### **Other Material Policy Considerations**

6.14 Other material policy considerations relevant to the determination of this planning appeal include the following documents:

- i. National Planning Policy Framework (2019)
- ii. Fareham Draft Local Plan 2036 (2017)
- iii. Fareham Draft Local Plan 2036 Supplement (2020)
- iv. Fareham Publication Local Plan 2037 (2020)
- v. Fareham Publication Local Plan 2037 Addendum (2021)
- vi. Fareham Landscape Assessment (2017)
- vii. Planning Obligations Supplementary Planning Document for the Borough of Fareham (excluding Welborne) (2016)
- viii. Definitive Strategy - 'Solent Recreation Mitigation Strategy' (December

2017)

ix. Hampshire Local Transport Plan (2011 2031)

### ***Emerging Local Plan***

- 6.15 The Council is in the process of producing a new Local Plan (items ii – v at para 5.19 above relate). The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 6.16 At a meeting of the Council's Executive on February 1<sup>st</sup> 2021 the Executive Leader announced that, following the publication of the revised Planning Practice Guidance on housing need in December 2020, a further consultation will take place on changes to the Publication Local Plan in early summer 2021 after the necessary technical work has been undertaken.
- 6.17 At the Council's Planning & Development Scrutiny Panel on 25<sup>th</sup> May 2021 the Revised Publication Local Plan was considered. The revised Local Development Scheme is due to be presented for Executive approval on 7<sup>th</sup> June 2021. Following this meeting it will be taken to the June Executive meeting then full Council later that month. Consultation is anticipated to run from 18<sup>th</sup> June – 30<sup>th</sup> July 2021.
- 6.18 The draft allocation (HA4) [see FBC.4] is for 350 dwellings at Downend Road East. Bullet point L provides a list of highway improvements and L(i) makes reference to a pedestrian footway or footbridge over the existing Downend Road bridge. The accompanying Plan indicates Multi-Modal improvements to Downend Road bridge and approaches.
- 6.19 There is an additional draft allocation (HA56) [see FBC.5] is for 550 dwellings at Downend Road East. Bullet point C indicates that primary highway access should be from the A27 (link to Junction 11) and Downend Road, Bullet point D includes a requirement for there to be a safe pedestrian priority crossing of Downend Road north of the existing Downend Road bridge. The accompanying Plan indicates Multi-Modal improvements to Downend Road bridge and approaches including signalled pedestrian crossing as well as a key pedestrian and cycle link going across Downend Road north of the railway bridge and then south to connect to the Bus Rapid Transit.

## 7 Proper Approach to Determining this Appeal

### The Section 38(6) test

- 7.1 As noted above, by Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the PCPA, this Appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The Council will demonstrate that the starting point in determining this Appeal is, therefore, to consider the extent to which the Appeal Development accords with or conflicts with the adopted development plan policies. The decision maker must then turn to other material considerations.

### Relevant case law on the Section 38(6) test and the tilted balance

- 7.2 The NPPF is an important material consideration under the section 38(6) test but, as Lord Carnwath made clear in the Supreme Court judgment in **Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council** [2017] UKSC 37 (“the Suffolk Coastal case”) [FBC.6] at [21], the NPPF “cannot, and does not purport to, displace the primacy given by the 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”. This is reiterated in NPPF Paragraph 12: “The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making”. The statutory priority of the development plan was also recognised by the Court of Appeal in **Gladman Developments Ltd v SSHCLG** [2021] EWCA Civ 104 [FBC.7], a case which also addressed the interplay between the section 38(6) test and the tilted balance under paragraph 11(d)(ii) of the NPPF, making clear among other things that a decision-taker may have regard to development plan policies when applying the tilted balance.
- 7.3 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.

### Housing Land Supply

- 7.4 At the time of submitting this SoC, the Council’s most recently published (February 2021) housing land supply position statement identifies that the Council can currently demonstrate a HLS of 4.2 years based on a 20% buffer as required by the Housing Delivery Test in February 2020. The housing land

supply position statement is included as appendix FBC.9 to this statement. The Council notes the Appellant's position on five-year HLS (SoC paragraphs 6.13 to 6.18) and will seek common ground on these issues to limit and focus the issues in dispute. The Council will also seek common ground with the Appellant on issues concerning affordable housing. The Council will provide detailed evidence to the inquiry to support its position to the extent required in light of the common ground reached.

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

7.5 In cases where a proposal is found to be in breach of policy DSP40, that policy 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."*

7.6 In the case of the *Land West of Old Street, Stubbington* (Appeal Ref. APP/A1720/W/18/3200409 provided at FBC.9), as with other recent 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.”*

- 7.7 The Council will submit that the weight to be applied to a breach of policy DSP40 is the same regardless of the exact extent of the shortfall and therefore if there is a breach of the policy in circumstances reflecting those in this appeal it should be “*a matter of the greatest weight.*”

**If the presumption in favour of sustainable development is applied, then how should NPPF Paragraph 11(d) be applied?**

- 7.8 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Mr Justice Holgate in **Monkhill Ltd v SSHCLG** [2020] P.T.S.R. 416 at [39] and [45] (upheld on appeal [2021] EWCA Civ 74) (FBC.10).
- 7.9 As set out in the decision notice and explained below, the proposal does not accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.
- 7.10 NPPF Footnote 7 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 7.11 NPPF Paragraph 11(d) states that for decision-taking, the presumption in favour of sustainable development means as follows:

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

- I. The application of policies in this framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

II. *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.'*

- 7.12 There are two tests set out at NPPF 11(d). It is the correct approach (see **Monkhill**, [FBC.10]) to apply these tests sequentially, the first test being whether there are policies within the Framework which provide a clear reason for refusing the Appeal Development. The Council considers that there are policies of this type in the Framework, as referenced at footnote 6 of paragraph 11(d) ('habitats sites'), which are relevant to the determination and subject to appropriate controls through conditions or a legal agreement it is considered that these matters can be satisfactorily addressed.
- 7.13 In respect of paragraph 11 d) ii., the Council's position is that the Appeal Development fails the 11 d) ii. test because the adverse effects of the Appeal Development would significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the NPPF as a whole.
- 7.14 The Council's position is therefore that, both on a tilted basis, the planning balance falls in favour of dismissing the Appeal.

## 8.0 The Local Planning Authority's Case

### Reason for Refusal

*'The development would be contrary to Policies CS5 of the adopted Fareham Borough Core Strategy 2011 and Policy DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and paragraphs 109 and 110(c) of the National Planning Framework, and is unacceptable in that:*

*The proposal would result in a material increase in vehicular and pedestrian movements along Down End Road across the road bridge over the railway line. The works to the bridge as shown on drawing no. ITB12212-GA-051D (titled "Downend Road Bridge – Proposed Signal Arrangement With Footway General Arrangement") would unacceptably affect the operation of the highway because of the vehicle queuing and driver delay that would arise and would result in unacceptable harm to the safety and convenience of users of the highway. Furthermore, the application does not make acceptable pedestrian crossing provision on Down End Road for future residents of the development.'*

- 8.1 The planning application includes a raft of assessments that, amongst other things, forecasts sustainable walking and cycling patterns. The Council considers such patterns will be reliant on the delivery of infrastructure that prioritises and encourages safe and reliable journey's by walking, cycling and public transport and it is not satisfied that the proposals for Down End Road are safe nor provide a high quality environment to encourage the successful delivery of such travel patterns.
- 8.2 The Assessment also considers the residual cumulative forecasts of traffic movements, based on existing and (2026) forecast peak hours. These are summarised in the Assessment and Statement of Case based on a design, signal arrangement, timings and capacities which do not correlate entirely with each other. Furthermore, Paragraph 6.5.3 of the Scoping Note records Assessments should be carried out for "*either a date ten years after the date of registration of the associated planning application or the end of the Local Plan period (whichever is the greater).*"
- 8.3 The Council will therefore complete a correct qualitative and quantitative assessment of the proposed infrastructure, based on a relevant reference/guidance<sup>i</sup> to show the development will result in unacceptable environmental, amenity implications, resulting in an increase in private vehicle trips. It will also show that the proposed improvements to Down End Road will not provide the timely delivery of appropriate transport infrastructure to

accommodate residual cumulative forecast demands and that these are contrary to Policy CS5 and DSP40.

- 8.4 The Council will demonstrate that the Appeal Development conflicts with local plan policy CS5 in that it fails to prioritise and encourage safe and reliable journey's by walking, cycling and public transport. It will demonstrate that the uncontrolled crossings of Down End Road are unsafe, and these will adversely affect the potential for walking trips, resulting in an increase in private vehicle trips. Similarly, the Council will also show that the width and operation of the shuttle-working traffic lights will detrimentally affect the potential for cycle trips, and this will also result in increases in private vehicle travel. Together these effects will reduce use of public transport and therefore increase development traffic such that the proposed improvements to the Down End Road railway bridge, will adversely affect the safety and operation of the local road network. These proposals do not therefore provide the timely delivery of appropriate transport infrastructure and conflict with Policy CS5 and DSP40.
- 8.5 The Council will demonstrate that a correct assessment of the environmental effects of development on pedestrian/cycle amenity and delay, examining effective widths relative to parapets and traffic, will result in unacceptable environmental, amenity and traffic implications. Having considered the planning balance the Council will show that the residual cumulative effect of these proposals would unacceptably harm the safety and convenience of users of the highway. For these reasons the Council will show the proposed development is contrary to paragraph 109 of the NPPF.

### **Planning Balance**

- 8.6 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:
- "If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".*
- 8.7 Paragraph 11 of the NPPF clarifies the presumption in favour of sustainable development in that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
- the application of policies in the Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or

- 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.
- 8.8 The approach detailed within the preceding paragraph, has become known as the ‘tilted balance’ in that it tilts the planning balance in favour of sustainable development and against the Development Plan.
- 8.9 The Council will demonstrate for the reasons outlined above, that the development with the implementation of the proposed alterations to the Downend Road railway bridge would not prioritise pedestrian and cycle movements and as a result would generate higher levels of private travel. Adopting a proactive stance to determine the application positively the Council has considered reasonable alternatives to provide better pedestrian/cycle arrangement and thereby address some of the non-motorised user safety and amenity issues, but these would unacceptably affect the operation of the road because of the vehicle queuing and driver delay that would arise.
- 8.10 The Council consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). The Council consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. Therefore, the Council consider that great weight should be attached to the conflict with the development plan that has been identified.
- 8.11 As concluded by the Inspector in the previous appeal, the Council will now accept that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan’s policies. Nevertheless, the conflicts with the development plan that the Council have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
- 8.12 The National Planning Policy Framework identifies a planning policy test explaining at paragraph 109 “Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe” exploring at paragraphs 108, 110 and 111 steps that can or should be taken to deliver sustainable development. The Council will use application material along with a guidance documents to inform the potential for

sustainable development travel, drawing on previous appeal decisions, to apply judgement to forecast 'residual cumulative impacts' on the transport network. These forecasts will assemble advice in WebTAG<sup>1</sup>, to consider forecast uncertainty along with PINS Advice Note 9, contemplating the successful delivery of mitigation in the assessment process. Appropriate to the stage in planning, these forecasts will be used to inform, at a local and strategic level, the residual cumulative effects of development and infrastructure.

- 8.13 There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short-term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, it is considered that harm would be less than substantial and would be outweighed by the previously mentioned social and economic benefits arising from the development.
- 8.14 The Council are of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that have identified could not be addressed through the imposition of reasonable planning conditions. The Council have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance the Council consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
- 8.15 For these reasons the Council will conclude that the appeal should therefore be dismissed and planning permission refused.

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<sup>1</sup> <https://www.gov.uk/government/publications/tag-unit-m4-forecasting-and-uncertainty>

## **9 Planning Conditions and Section 106**

### **Conditions**

- 9.1 The Council and the Appellant will seek to agree a list of planning conditions in the Statement of Common Ground.

### **Section 106 Agreement**

- 9.2 The Council and the Appellant will seek to agree a draft unilateral undertaking in advance of the Inquiry taking account of the information on the Decision Notice referred to at paragraphs 4.4 and 4.5 of this statement.

## **10.0 Witnesses**

10.1 The Council expects to call upon expert witnesses at the Inquiry to deal with the following matters unless resolved through negotiation of Statements of Common Ground such that evidence does not need to be presented:

- Planning matters (including countryside issues, heritage considerations, five-year housing land supply, and Habitats and other ecological matters)
- Highways matters

## Highway References

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1. <sup>i</sup> National Design Guidance, including:
  - a. Design Manual for Roads & Bridges<sup>i</sup>, amongst others including CD123, CD127, CD 143, CD195 and interim advice notes
  - b. Traffic Signs Manuals<sup>i</sup>, including Chapter 6
  - c. Manual for Streets (MfS, including MfS1<sup>i</sup> and MfS2) and reserve the right to consider MfS3 if available<sup>i</sup>
  - d. Local Transport Notes, including, which may Include LTN 1/20<sup>i</sup> et al.
  - e. Traffic Advisory Leaflets
  - f. WebTAG<sup>i</sup>
  - g. Various Institution of Highways & Transport Publications<sup>i</sup>, including Planning for Walking, Planning for Cycling and Buses in Urban Developments et al.
  - h. Guidelines for the Environmental Assessment of Road Traffic
2. Data and Research Studies which may include:
  - a. Census
  - b. National Travel Survey
  - c. TRL publications, including TRLRR67, CR149, 241, 549, 568, 593, 623, SR712, LR895
  - d. JCT Conference Papers
  - e. TRICS Data & Conference Papers
  - f. Smarter Choices Travel Research
  - g. Healthier Streets Assessments<sup>i</sup>
  - h. UCL Street Mobility and Network Accessibility Papers<sup>i</sup>
  - i. Community Severance: Where is it found and at what cost?<sup>i</sup>
3. Appeal Decisions, which may include:
  - a. Broughton Lane, Maidstone
  - b. Micklethwaite, Bingley, West Yorkshire
  - c. Scotforth Road, Lancaster
  - d. Co-joined appeal at Fleet Marston, Hampden Fields & Weedon Hill, Aylesbury