
STATEMENT OF CASE

**LAND TO THE SOUTH OF ROMSEY AVENUE,
FAREHAM**

**Appeal against Fareham Borough Council's
decision to refuse outline planning permission
for residential development of 225 dwellings,
bird conservation area and area of public open
space with all matters reserved except for
access**

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On behalf of:

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LPA Ref: P/18/1073/FP

WBP Ref: 7671



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1.0 Introduction

Context

- 1.1. This Appeal is made against the decision of Fareham Borough Council to refuse outline planning permission for residential development of 225 dwellings, a bird conservation area and public open space, with all matters reserved except for access (LPA Ref: P/18/1073/FP).
- 1.2. The Appeal Scheme was refused by decision dated 21st September 2020, which reasons for refusal are as follows:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17 & CS18 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP2, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan,

And paragraph 170 of the National Planning Policy Framework (NPPF), and is unacceptable in that:

- a) **The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;**
- b) **The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders;**
- c) **The proposal would result in extra parking restrictions being placed on Beaulieu Avenue and Romsey Avenue and on street parking being displaced from the access road into the development site onto Romsey Avenue. As a result the development would lead to an increase in car parking on both Beaulieu Avenue and Romsey Avenue which would be inconvenient to users of the highway and harmful to highway safety;**
- d) **The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced;**

- e) The proposal fails to provide sufficient information to demonstrate the satisfactory disposal of surface water;**
- f) The proposal would result in the loss of best and most versatile agricultural land;**
- g) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure financial contributions towards off-site highway improvements to mitigate the impact of the development on the strategic highway network; improvements and measures to promote sustainable modes of travel; measures to mitigate the increase in traffic in the vicinity of Wicor Primary School; the introduction and/or amendment of traffic regulation orders in Beaulieu Avenue and Romsey Avenue, and; travel plan approval and monitoring fees;**
- h) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;**
- i) In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;**
- j) In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;**
- k) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;**
- l) In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.**

- 1.3. As set out in the Council's informative accompanying the Decision, matters (g) – (l) can be addressed by means of a legal agreement prepared under Section 106 of the Town & Country Planning Act 1990.

Addressing the Reasons for Refusal

- 1.8. For the reasons explained, the Appeal Scheme represents an acceptable form of development in the 'countryside', thus addressing reason for refusal (a).
- 1.9. Reason for refusal (b) relates to effects of the Appeal Scheme upon Brent geese and waders. There will be no adverse effect on the integrity of any European site as a result of effects of the development on or loss of part of a Primary Support Area for Brent geese or waders. Instead the Appeal Scheme will provide enhancements for Brent geese/waders and is a benefit of the proposal.
- 1.10. Reason (c) relates to displaced parking and highway safety matters. However, and as set out in the County Highways response, there is no objection to the Scheme in relation to highway safety and/or in relation to the imposition of parking restrictions (by means of a Traffic Regulation Order (to be secured by means of a Grampian condition)) at the junctions of Beaulieu Avenue/Romsey Avenue and at the site access/Romsey Avenue. As such, reason (c) is not supported by the evidence, which matters we will address in expert highways evidence.
- 1.11. Reason (d) relates to impacts on protected and priority species. All impacts on protected and priority species will be avoided or mitigated. The Appeal Scheme will deliver a biodiversity net gain at the Appeal Site exceeding 10% compared with the baseline biodiversity value of the Appeal Site.
- 1.12. Reason (e) relates to surface water disposal, which strategy has been addressed in the submitted material and is expanded upon below.

- 1.13. Reason (f) relates to the loss of best and most versatile agricultural land. The Site contains Grade 1 and Grade 2 land and is a matter to be weighed in the overall planning balance. However, and what is clear, is that the Council cannot meet its ongoing need for housing without the loss of agricultural land.
- 1.14. Reasons (g) to (l) relate to planning obligations, which matters will be secured in a s106 agreement.
- 1.15. All of the reasons will be addressed in evidence, with emphasis placed upon reason (a) to (f).
- 1.16. The Appellant's evidence will include reference to case law, appeal decision, relevant committee reports within Fareham and any documents necessary to support the case being made. In addition, the Appellant will also seek to agree a set of Core Documents with the Council.

Overarching Summary of the Appeal Scheme's Merits

- 1.17. Having regard to the relevant planning policy and material considerations, the acceptability of the Appeal Scheme may be summarised as follows:
- i. The development of the Appeal Site for a sustainable form of development should now be considered favourably in accordance with the advice at paragraph 11 of the NPPF, having regard to the importance of delivery of housing for meeting the district's market and affordable housing needs and the delivery of economic and sustainable growth noting that there is a significant deficit.
 - ii. The Council cannot demonstrate an up-to-date five year supply of deliverable sites for housing. As such, and in accordance with paragraph 11(d)(i) the most important policies (including those relating to settlement boundaries) are to be regarded as out of date.

- iii. The Council's continued inability to demonstrate a robust five year housing land supply position triggers the operation of policy DSP40 which policy was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6; which is to permit development in breach of those policies when the Council could not demonstrate a 5 year housing land supply. Conformity with Policy DSP40 means the Appeal Scheme is in accordance with the development plan when taken as a whole.
 - iv. As the most important policies of the Local Plan are out of date, the presumption in paragraph 11(d) of the NPPF applies (subject to paragraph 177 of the NPPF).
 - v. The Scheme represents a sustainable form of development and the Appeal Scheme involves the provision of significant benefits, including the creation of suitable habitat for Brent geese and waders. As such, paragraph 177 is not engaged.
 - vi. Not only are there are no adverse impacts which significantly and demonstrably outweigh the benefits, but there are in fact significant benefits which justify the grant of planning permission.
 - vii. The Appeal Scheme is submitted in accordance with the NPPF and is in accordance with the Development Plan when taken as a whole. As such, the Scheme should be allowed so as to permit a sustainable form of much needed new market and affordable housing in helping to meet the Borough's housing needs and to provide the additional benefits which have been identified.
- 1.18. Overall, it is the case for the Appellant that the public benefits of the proposal clearly and demonstrably outweigh the loss of BMV agricultural land any minor landscape impact that may be occasioned.
- 1.19. The Appeal Scheme accords with the five criteria in policy DSP40. Consequently, it accords with the development plan *taken as a whole*.

2.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA

- 2.1. The Appeal Site and surrounds will be described in evidence.
- 2.2. The Site is edged red on the accompanying Site Location Plan No. 16.140.01C and extends to approximately 12.55ha.
- 2.3. The Site is broadly rectangular in shape and is accessed from Romsey Avenue to the north.
- 2.4. As such, the northern boundary to the Site is formed by the rear gardens of properties fronting Romsey Avenue.
- 2.5. The eastern boundary is formed by recreational open space associated with the development of 120 dwellings by Persimmon Homes off Cranleigh Road (which scheme was allowed at appeal by decision dated August 2017). The Appeal Scheme includes a footpath link to this boundary which enables the open space to be integrated with the proposed development.
- 2.6. To the south west of the Appeal Site lies the Wicor Recreation Ground.
- 2.7. Although the Appeal Site is located adjacent to, but ultimately beyond the settlement boundary for Portchester, the local environment within which the Appeal Site is located is heavily influenced by urban development.
- 2.8. No part of the Appeal Site (or adjoining blue land) forms part of a Conservation Area and nor is it identified for any landscape 'value' and nor is the Site located within or adjoining a Conservation Area.
- 2.9. Local Plan Policy DSP14 sets out the approach to the consideration of development on supporting sites for Brent geese and waders.

- 2.10. The Appeal Site is identified on the Policies Map¹ as an ‘uncertain’ site for Brent geese and/or waders. In this context, Policy DSP14 states that development on ‘uncertain’ sites for Brent geese and/or waders (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be permitted where studies have been completed that clearly demonstrate that the site is not ‘important’.
- 2.11. Studies have been completed that clearly demonstrate that the Appeal Site is not “important” for Brent geese or waders and further the Appeal Site does not provide habitat suitable for Brent geese or waders.
- 2.12. As detailed in the Flood Risk Assessment that accompanied the application, the Appeal Site is classified as falling within Flood Zone 1. There are no further environmental constraints which would preclude the proposed development.

¹ viewed online on 17 March 2021

3.0 APPEAL SCHEME DESCRIPTION

3.1. The Appeal Scheme will be described in evidence and it will be explained that the Framework Layout has been developed and informed following a thorough review of the opportunities and constraints afforded by the Site.

3.2. The Appeal Scheme description² is as follows:

“Outline application for 225 dwellings, bird conservation area and area of public open space, with all matters reserved except for access.”

3.3. Only the principle of developing the site for 225 dwellings and the means of access are to be determined as part of this outline application.

3.4. Appearance, landscaping, layout and scale are reserved for subsequent determination.

3.5. The Appeal Scheme is set out on the following plans:

The Scheme

- i. Site Location Plan No. 16.140.01C
- ii. Site Areas Plan No. 16.140.28
- iii. Proposed Access Drawing No. 5611.002D
- iv. Highway Works Plan No. 5611.015C

Masterplan Approach

3.6. Preparation of the Illustrative Site Plan has been informed by a number of technical studies, and the Masterplan approach, is underpinned by a thorough contextual appraisal of the site and its surroundings. Full details are set out in the accompanying Design & Access Statement.

² Originally submitted as a hybrid seeking full planning permission for 58 dwellings and outline planning permission for 167 dwellings but amended during determination to an outline application, with only access to be determined.

3.7. The vision is to be achieved through the following design principles included in the masterplan design:

- (i) The creation of a sustainable environment for living with a mix of residential accommodation.
- (ii) A place with a varied character that responds to the local vernacular and built context to provide a sense of place.
- (iii) A sustainable development which responds to best practice, with house type designs to be approved at the reserved matters stage that will seek to minimise energy use, sustainably manage water, responsibly source materials and manage waste and ecology.
- (iv) Enhancing the landscape edge to the boundaries of the site, in particular the southern and western boundaries.
- (v) Respecting the form, character and setting of the wider countryside to the south and west.
- (vi) A development which enhances biodiversity by creating suitable habitat for Brent geese and waders and creating opportunities for new habitat areas for other species.
- (vii) Integrating the site with the existing settlement through the provision of publicly accessible walking routes.
- (viii) To encourage and enhance the opportunities for sustainable movement, through the provision of pedestrian and cycle linkages to neighbouring facilities and public transport routes.

3.8. The principal elements of the Appeal Scheme are summarised as follows:

- (i) The Appeal Scheme provides for 225 dwellings, to include an appropriate mix of house types, within a landscaped setting.
- (ii) The 90 affordable dwellings (40%) can be secured by condition, to include an agreement as to an appropriate mix of affordable types and tenures.
- (iii) Buildings heights will be in conformity with existing dwellings in the vicinity of the proposal.
- (iv) The Appeal Scheme will include a mix of housing tenures, together with up to 40% affordable housing provision.
- (v) Vehicle access is provided from Romsey Avenue.

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- (vi) New pedestrian and cycle routes as well as improvements to existing ones to provide for sustainable linkages to the surrounding urban area.
 - (vii) SuDS.
 - (viii) Provision of a Bird Conservation Area.
- 3.9. The Illustrative Site Plan provides for 225 dwellings on approximately 6.7ha, which equates to a density of circa 34dph.
- 3.10. This density will ensure the new dwellings integrate with, and complement the local area in terms of scale, massing and layout, whilst sympathetically responding to the site's edge of settlement location.

Bird Conservation Area

- 3.11. The Appeal Scheme also allows for the creation of a Bird Conservation Area ("BCA") area extending to circa 4.5ha, along with a separate area of publicly accessible open space extending to approximately 1.4ha.
- 3.12. The proposed BCA will deliver an enhancements for Brent geese and waders and other species.
- 3.13. The proposed location and design of the BCA ensures that suitable Brent goose and wader habitat will be present between the urban area and the SPA in perpetuity. Furthermore, the proposed BCA provides enhanced suitability by preventing disturbance and ensuring availability of suitable habitat throughout the winter period.
- 3.14. The future management, maintenance and monitoring of the BCA in perpetuity will be prescribed in a Landscape and Ecological Management Plan ("LEMP") to be provided to the Inspector. Funding for the BCA in perpetuity will be secured through the legal agreement.
- 3.15. The majority of the BCA (3.7ha) will be managed as a nitrogen rich grass and clover sward which is the most attractive terrestrial habitat for foraging Brent geese and will provide suitable foraging habitat for waders including curlew,

oystercatcher and redshank. The remainder will be managed as a network of high biodiversity value habitats for a wide variety of bird species, including waders, wildfowl and passerines

Other Protected Species Present at the Appeal Site

- 3.16. As to avoidance, mitigation and enhancement in relation to other protected species, details will be set out in a Construction and Environmental Management Plan (“CEMP”) and a Landscape and Ecological Management Plan (“LEMP”).
- 3.17. The CEMP will set out all mitigation measures related to the construction phase of the development, whilst the LEMP will set out detailed management, maintenance and monitoring prescriptions for all greenspace areas within the redline boundary of the Appeal Site that provide habitat of biodiversity value.

Environmental Statement

- 3.18. In so far as the Appeal Application was accompanied by an Environmental Statement (“ES”), prepared in accordance with the Town and Country Planning (Environmental Impact Assessment (“EIA”)) Regulations 2017, any necessary/required Addendum or update will be prepared pursuant to Regulation 25 of the EIA Regulations.
- 3.19. In accordance with Regulation 25(3) the availability of the additional ES material will publicised in the form of a notice and will be placed in a local newspaper.
- 3.20. Furthermore, as regards the Appeal, the Inspector is now the Competent Authority who must comply with regulation 63 of the Conservation of Habitats and Species Regulations 2017 in relation to Habitats Regulations Assessment. The evidence for this exercise will be provided in the form of a shadow Habitats Regulations Assessment.
- 3.21. Pursuant to the aforementioned Regulations, the relevant documents to be prepared as part of the Appeal process will be consulted upon.

4.0 THE DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS

General

- 4.1. Whilst the detailed policy position will be set out in evidence, this section summarises the planning policy position, against which the acceptability of the Appeal Scheme falls to be determined.
- 4.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.
- 4.3. The first test, and the statutory starting point is whether the application is '*in accordance with the plan*', which is a phrase that has been the subject of debate in the High Court in the context of Section 54A of the Town and Country Planning Act 1990.
- 4.4. In his judgment of 31 July 2000 (*R v Rochdale Metropolitan Borough Council ex parte Milne*), Mr Justice Sullivan concluded as follows:
- "...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan"..."**
- 'For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.'**
- 4.5. The *Rochdale* judgment is applicable to the interpretation of Section 38(6) of the 2004 Act such that the decision maker must reach a decision as to whether the proposal is in accordance with the development plan when it is considered as a whole, which position is set out below.

- 4.6. Such matters (the tensions between development plan policies) have more recently been considered in *Corbett v Cornwall County Council 2020 EWCA Civ508* (Case No. C1/2019/2179) (April 2020). This judgment reaffirms the position that it is enough that the proposal accords with the development plan considered as a whole, such that a proposal does not have to accord with each and every policy therein in order to be development plan compliant.
- 4.7. For the reasons set out below, and by virtue of compliance with Policy DSP40, it is the Appellant's case that the Appeal Scheme accords with the development plan when taken as a whole, such that the presumption in s. 38(6) of the Planning and Compulsory Purchase Act 2004 is in favour of the development.
- 4.8. It is the Appellant's case, which position has been confirmed in numerous appeal decisions within Fareham, that the settlement policy boundaries are out of date. Moreover, there is an ongoing and demonstrable shortfall in the Council's five year housing land supply position.
- 4.9. In the event the Inspector were to find some conflict between the Appeal Scheme and the development plan, the material considerations would tilt the balance in support of the grant of planning permission, including the Council's acceptance that they cannot demonstrate a five year supply of deliverable housing land, the significant need for housing, the grant of planning permission by the Council and at appeal for housing on land beyond the settlement boundaries as defined in the Core Strategy and Local Plan Part 2, the proposed review of the settlement boundaries as per of the emerging Local Plan Review; and the content of the NPPF (February 2019).
- 4.10. Section 39 of the Act identifies the requirement for decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development. These requirements must be considered in light of the NPPF, including the 3 roles of sustainability set out at paragraph 8 (economic, social and environmental). However, and as set out at paragraph 9 of the NPPF, the three roles are not a checklist and their values are considered in light of that context.

The Development Plan

- 4.11. The Development Plan comprises the following:
- Local Plan Part 1: Core Strategy (“CS”) (August 2011)
 - Local Plan Part 2: Development Sites & Policies (“DSP”) (June 2015)
 - Local Plan Part 3: Welborne Plan (“WP”) (June 2015)
- 4.12. Prior to 8th June 2015, Fareham Borough Council used the ‘saved’ policies from the Fareham Borough Local Plan Review (2000), together with those contained within the Fareham Borough Core Strategy to determine applications.
- 4.13. The settlement boundaries as set out within the Proposals Map for the Fareham Borough Council Local Plan Review (2000) were the spatial boundaries at that time. These two documents also formed the Development Plan for the Borough.
- 4.14. The Proposals Map was then amended following the Government Direction of 2007 and the adoption of the Core Strategy (Local Plan Part 1) in 2011.
- 4.15. The key changes to the Proposals Map were at Coldeast Hospital and Daedalus Airfield, identifying new strategic allocations and designations at these two locations. The full review of the settlement boundaries, as set out in the Core Strategy took place as part of the preparation (and examination) of Local Plan Part 2: Development Sites and Policies. However, no changes were made to the settlement boundaries as part of this plan. The Proposals Map from the Fareham Borough Local Plan Review has essentially been retained but broken down into a series of 12 Inset Maps within the Fareham Borough Local Plan Part 2: Development Sites and Policies. This Plan now forms part of the Development Plan and follows on from the adopted Fareham Borough Core Strategy (Local Plan Part 1).

4.16. The Fareham Borough Core Strategy (Local Plan Part 1) was adopted on 4 August 2011 and as such pre-dates the publication of the National Planning Policy Framework (2012) and the more recent 2018 version.

4.17. The most important policies for determining the Appeal are out of date, including in relation to their spatial application.

Core Strategy

4.18. The Core Strategy was adopted in August 2011 and pre-dates the March 2012 version of the Framework. It was prepared to be in general conformity with the now revoked South East Plan (May 2009) and sets out a housing requirement for the period 2006 to 2026. It defers site allocations to subsequent DPDs.

4.19. At this outline stage, it is considered that the Appeal Scheme accords with all of the relevant Core Strategy policies so far as they can be considered at this stage;

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

4.20. In *Suffolk Coastal DC v Hopkins Developments Ltd* [2017] UKSC 37 Lord Carnwath's judgement confirms at paragraph 63 that the weight to be attached to restrictive policies, such as countryside and landscape policies, can be reduced where they are derived from settlement boundaries that in turn reflect out of date housing requirements. There are obvious parallels with Fareham.

- 4.21. In the case of Fareham Borough, the Council have been granting planning permissions for housing development outside of settlement areas that are in breach of countryside and landscape policies in order to meet market and affordable housing needs and maintain a rolling five-year land supply. Schemes have equally been allowed at appeal.
- 4.22. Consequently, the countryside and landscape policies are not meeting current housing needs on the basis of the definition of built-up areas as defined in the development plan, despite the approach set out at policy DSP40 of Local Plan Part 2 (see below) which allows for development beyond the defined settlement boundaries where it meets the stated criteria.
- 4.23. On this basis, reduced weight applies to any conflict with policies CS2, CS14 and CS16.
- 4.24. The Appellant's position in relation to the applicable policies from the Core Strategy may be summarised as follows an overarching point, the following points are summarised:
1. The spatial policies for the supply of housing do not meet current housing needs.
 2. The settlement boundaries defined under CS14 are not sufficient to meet current housing need and the weight to be given to the conflict with this policy is reduced in accordance with the operation of Policy DSP40.
 3. The Appeal Scheme's landscape impact has been minimised and the acceptable of the scheme in this regard is agreed with the Council, noting there is no landscape reason for refusal.
 4. The Appeal Scheme provides a safe means of access.
 5. The Appeal Site is in a sustainable location³.
 6. The loss of a comparatively small area Grade 1 and 2 BMV agricultural land should be afforded no more than limited weight.

³ See Transport Addendum Update (SMA) (Oct 2019) (Sections 5, 7 and Appendix K refer)

7. The proposed BCA creates enhanced habitat for Brent geese and waders, which is a material consideration in support of the Appeal Scheme in so far as the Appeal Site does not currently provide a suitable habitat. The Appeal Scheme will incorporate measures which will avoid or mitigate any impacts on other ecological receptors at the Appeal Site and will deliver a net gain for biodiversity.
 8. The requisite enhancement or mitigation measures are secured by condition and/or through the planning obligation.
- 4.25. It is therefore concluded that the proposal is consistent with the aims of the Core Strategy, as well as in accordance with policy DSP40 of the Local Plan Part 2 (see below).
- 4.26. However, Policies CS2, CS14 and CS16 are not consistent with the requirement in the Framework to boost significantly the supply of housing land. As such, the weight given to these policies in the overall planning balance is significantly reduced, reflecting the position at paragraph 63 of the Suffolk Coastal judgment (Hopkins Homes). In addition, the absence of a five year supply of deliverable housing land means the important policies are out of date and the weight to any conflict is reduced accordingly.

Local Plan Part 2: Development Sites & Policies (“DSP”) (June 2015)

- 4.27. The Development Sites and Policies (“DSP”) DPD was adopted in June 2015 and allocates sites and land for housing.
- 4.28. The following Local Plan Part 2 policies are considered relevant to this Appeal:
- DSP2 – Environment Impact
 - DSP5 - Protecting and enhancing the historic environment
 - 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

- 4.29. Policy DSP6 is not consistent with the requirement in the Framework to boost significantly the supply of housing land. As such, the weight given to this policy in the overall planning balance is significantly reduced, reflecting the position at paragraph 63 of the Suffolk Coastal judgment (Hopkins Homes).
- 4.30. The DSP also includes Policy DSP40 which allows for additional housing sites outside the defined settlement boundaries where the Council does not have a five year supply of deliverable housing land and where the scheme satisfies the five criteria set out in the policy.
- 4.31. Importantly, the Part 2 Plan did not review housing numbers in accordance with the NPPF. Accordingly, and as with the Core Strategy the spatial policies and settlement boundaries are out of date (see Hopkins homes).
- 4.32. The Policy wording, which provides for flexibility in the event of a shortfall in the five year housing land supply position, was included as a result in the examination of the policy through the hearing sessions which addressed concerns about the lack of flexibility in relation to the supply of housing land.
- 4.33. Paragraph 47 of the Local Plan Inspector's Report (May 2015) states as follows (our emphasis underlined):

“Paragraph 14 of the NPPF refers to the need for local plans to incorporate sufficient flexibility to adapt to rapid change. Currently LP2, for example policy DSP40 on Housing Allocations and its supporting text, does not provide any indication of how the Council would respond in circumstances where the predicted level of housing delivery is not being achieved. Consequently it is proposed by the Council to strengthen this element of LP2 by explaining that in principle additional housing sites may come forward if it can be satisfactorily demonstrated that the Council does not have a five year land supply when assessed against the CS housing targets. New explanatory text is proposed and the policy would be modified to include the criteria against which any such proposal would be assessed. This is a pragmatic and positive way forward and will contribute to ensuring that LP2 is justified, effective and consistent with national policy. MM21 is therefore recommended.”

- 4.34. It is clear that the amendments to the wording of Policy DSP40 (as set out in the adopted Local Plan Part 2) were explicitly required in order to ensure the Development Plan was effective and consistent with national policy.
- 4.35. The Council acknowledges that it is unable to demonstrate a five year supply of housing land against the requirements of the SHMA, PUSH Position Statement and/or the standard methodology set out in the NPPF.
- 4.36. The proposal is consistent with the approach to allowing for additional sites beyond the settlement boundaries as set out in Policy DSP40.
- 4.37. Policy DSP40 states in full as follows:

“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.”

- 4.38. The Appeal Scheme satisfies the requirements at parts (i) to (v) of the policy and is entirely acceptable when assessed against the context of Policy DSP40; (which matters are considered in section 5 below). However, and in so far as

DSP40 is also one of the most important policies, that too is also rendered out of date by operation of paragraph 11(d) of the NPPF.

- 4.39. Save for the conflict with DSP6, the Appeal Scheme accords with the policy considerations set out at paragraph 4.27 above.

Local Plan Part 3: Welborne Plan (“WP”) (June 2015)

- 4.40. The Welborne Plan was adopted in June 2015 and sets out how the broad type, location, amount and character of the development at Welborne. This is not directly relevant in relation to the approach to development management.

Summary

- 4.41. The conclusions drawn from the appeal correspondence and accepted in other appeal decisions are as follows:
- The Core Strategy is out of date in relation to the housing requirement set out in Policy CS2 (and the associated settlement boundaries).
 - The Local Plan Part 2 (which revises the Core Strategy housing requirement from 2011 in order to reflect the requirement figure set out in the South Hampshire Strategy) does not seek to identify the full objectively assessed needs for market and affordable housing for the purpose of the NPPF.
 - The Council accepts that the Development Plan does not provide for local housing needs.
- 4.42. In so far as the Appeal Scheme satisfies the five criteria set out at Policy DSP40, given the lack of a deliverable five year supply of housing land, it is considered that the scheme accords with the development plan when taken as a whole.

Material Considerations

National Planning Policy Framework

- 4.43. The National Planning Policy Framework (NPPF) was most recently updated in February 2019. It is a material consideration of particular standing in the determination of planning applications.
- 4.44. The content of the NPPF as it relates to the proposed development of the application site is addressed in the order set below:
- The presumption in favour of sustainable development
 - Decision making
 - Delivering a sufficient supply of homes
 - Promoting sustainable transport
 - Conserving and enhancing the natural environment
 - Conserving and enhancing the historic environment
- 4.45. Paragraph 8 of the NPPF identifies that there are three dimensions to sustainable development, comprising (i) economic, (ii) social; and (iii) environmental.

Economic Role

- 4.46. The economic role requires the planning system to, inter alia, ensure that sufficient land of the right type is available in the right places and at the right time to support growth. This is achieved with the application scheme on the basis that it is located within a sustainable location, within walking and cycle distance to local services and facilities. The scheme also provides for housing development of the type and mix required to meet identified needs.
- 4.47. The Scheme further addresses the economic role in terms of increased LPA Revenues, Construction impacts (increased GVA, jobs etc.) and increased expenditure in local area.

Social Role

- 4.48. The social role requires the planning system to provide the supply of housing required, creating a high quality built environment, accessible to local services and reflecting the community's needs. All of these requirements can be achieved with the Appeal Scheme.

Environmental Role

- 4.49. The environmental role requires the planning system to protect and enhance the natural, built and historic environment. This can be achieved with the proposal in a location that will not result in any significant adverse effects upon the character of the surrounding area, including in landscape terms.

Decision Taking

- 4.50. In setting out the presumption in favour of sustainable development, paragraph 11 of the NPPF adds, in relation to decision-making at 11(c), that this means approving development proposals that accord with the development plan (as is the case here, with the Appeal Scheme submitted in accordance with the provisions at policy DSP40).
- 4.51. It adds at paragraph 11(d) 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 (i) policies in the NPPF provide a clear reason for refusing the development; or (ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits.
- 4.52. It has been discussed earlier in this Statement, why it is considered that the policies for the supply of housing (both in terms of the housing requirement and the associated settlement boundaries) are materially out of date.
- 4.53. Section 4 of the NPPF sets out the approach to decision-taking. Paragraph 38 makes it clear that decision-makers at every level should seek to approve applications for sustainable development where possible.

- 4.54. The site is located in a sustainable location and will improve the economic and social conditions of the area. It will also help to provide an enhanced landscaped edge to the settlement and new biodiversity habitats.
- 4.55. Paragraph 48 refs to the weight to be given to relevant policies in emerging plans according to the stage of preparation and the extent to which there are unresolved objections. In the Fareham Borough context, the emerging Local Plan is only at the Regulation 18 stage and carries very limited (if any) weight.

Delivering a Sufficient Supply of Homes

- 4.56. Paragraph 59 sets out the Government's objective of significantly boosting the supply of homes.
- 4.57. Paragraph 60 sets out the approach to determining the minimum number of homes needed, which should be informed by a local housing need assessment conducted using the standard method in national planning guidance – unless an alternative approach is justified. It is also added that any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.
- 4.58. Paragraph 67 sets out the need to provide a five year supply of deliverable sites for housing. It also requires sites for years 6-10 and beyond.
- 4.59. Paragraph 73 requires LPAs to demonstrate a five year supply of deliverable housing land. Pursuant to footnote 7, the lack of a five year supply riggers the presumption at paragraph 11(d).
- 4.60. This application for 225 dwellings would make a notable contribution towards the shortfall in supply.

Promoting Sustainable Transport

- 4.61. Section 9 sets out the approach to providing for sustainable growth.

4.62. Paragraph 103 states as follows:

‘The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making’.

4.63. The Appeal Site is located adjoining an identified settlement, within walking distance to local services and facilities. The supporting Transport Assessment demonstrates the acceptability of the scheme in sustainability terms. Accordingly, the Scheme is consistent with paragraph 103.

Natural Environment

4.64. Section 15 sets out the approach to conserving and enhancing the natural environment.

4.65. Although there are 3 no. ecological reasons for refusal (reasons (b), (d) and (h)), these matters are fully addressed in section 5 below and appropriate avoidance, mitigation and enhancement measures, including the provision of the BCA, will be secured through the CEMP and LEMP referred to above and funding secured under the legal agreement. Accordingly, paragraph 177 of the NPPF is not a constraint to development in this case.

4.66. As to landscape considerations, the site is not located within any formal designations for the most valued landscapes and the Council do not object to the development of the scheme in landscape terms. Accordingly, paragraph 170 of the NPPF is not a constraint to development in this case.

Five Year Housing Land Supply

4.67. The Council has previously accepted a land supply deficit, such that the release of the site for housing is considered to be acceptable.

4.68. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Porchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework’s deliverability definition. I therefore consider that the Council’s claimed 4.66 years HLS position is too optimistic and that the appellant’s figure of 2.4 years better represents the current situation.”

4.69. The deficit in the Council's five year housing land supply position has continued to persist.

4.70. The Council's latest position is set out in their Report to planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.

4.71. However, and on our analysis, the actual shortfall is much greater. As confirmed in case law, the extent of the shortfall is relevant to the weight that can be given to out-of-date policies, as well as to the benefits of housing delivery. Accordingly, whilst the Council concedes that it is unable to demonstrate an up-to-date five year housing land supply, the extent of the

shortfall is material to assessing the merits of housing delivery from the appeal scheme.

- 4.72. Based upon our assessment of site deliverability, we are of the view that the deficit is substantial, with a circa **1 year supply of deliverable housing land as at the current base-date (1st Jan 2021 to 31st Dec 2025)**.
- 4.73. The Appellant will also seek to advance a Housing Land Supply Statement of Common Ground with the Council, thus narrowing the issues between the parties in this issue and saving time and resources at the inquiry. The Appellant also reserves the right to review the five year housing land supply case on account of the publication of more recent information should that materialise from the Council prior to the exchange of evidence.
- 4.74. On the basis of the foregoing, the Appeal Scheme would make a valuable contribution to addressing the shortfall in the Council's five year housing land supply position.

Affordable Housing

- 4.75. The Appeal Scheme proposes the on-site provision of 90 affordable dwellings, thus achieving a policy-compliant 40% affordable housing provision.
- 4.76. Paragraphs 20 and 61 of the NPPF sets a strong emphasis on the delivery of sustainable development including affordable homes, whilst paragraph 59 clearly sets out the Government's aim to "boost significantly the supply of homes".
- 4.77. The need for affordable housing and their importance in achieving sustainable development is emphasised in many government publications, including House of Commons Committee of Public Accounts – Planning and the Broken Housing Market (19th June 2019).

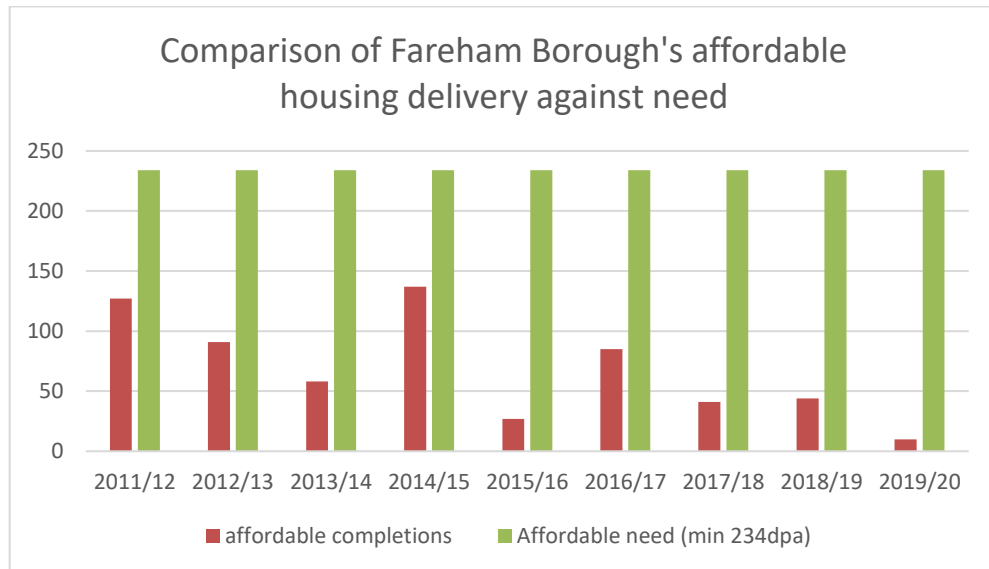
- 4.78. The PUSH Spatial Strategy OAN Update of August 2015 indicates the depending upon the affordability threshold (as outlined in Table 49), between 234 and 312 affordable dwellings are required annually in Fareham Borough from 2011 to 2036 (Table 59).
- 4.79. The Council's Affordable Housing strategy (2019-36) indicates that there was a current need for around 3,000 affordable homes in the Borough (page 11) with around 1,000 households on the waiting list. Page 14 of the Housing strategy indicates that the total estimate for new affordable homes from 2019 until 2036 is for 3,500 properties, most of which will be delivered within market developers i.e. as envisaged in the Appeal Scheme.
- 4.80. As indicated below (sourced from the Government's Affordable Housing Delivery Statistics⁴), the Council have delivered 542 affordable homes in the period April 2011 to March 2019. This is equivalent to an average rate of 67.75 affordable dwellings per annum since 2011.

Year	Annual based PUSH Assessment (2015)	Req. upon OAN	Net Housing Completions annum	Affordable per	Annual Surplus/Shortfall
2011/12	234		127		-107
2012/13	234		91		-143
2013/14	234		58		-176
2014/15	234		137		-97
2015/16	234		27		-207
2016/17	234		85		-149
2017/18	234		41		-193
2018/19	234		44		-190
2019/20	234		10		-224
Total	2,106		620		-1,486

- 4.81. As the table above indicates, the delivery of 620 affordable dwellings since April 2011 should be viewed in the context that this represents an under provision of 1,486 affordable dwellings as assessed by the PUSH OAN Appraisal to achieve the annual requirement of 234 affordable units.

⁴ Live table 1011 - [Live tables on affordable housing supply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/live-tables-on-affordable-housing-supply)

4.82. The information in the table above is illustrated in the chart below.



4.83. On the basis of the available evidence, it is clear that there is a significant need for additional affordable homes and the delivery of affordable housing against the identified need has been woeful.

4.84. As the table above indicates, between April 2011 and March 2020, there has been a cumulative under-delivery of 1,486 affordable dwellings (when assessed against identified needs). This represents a 71% shortfall against assessed affordable housing needs during this period, an acute gap in provision which affects Fareham Borough and how it functions in an economic, social and environmentally sustainable way.

4.85. The future delivery of affordable housing in Fareham Borough is highly uncertain. In addition to the very significant shortfall, there is also the question of whether future needs will be met. This is especially important given the over reliance on the new community at Welborne to address both future market and affordable housing supply in the borough.

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- 4.86. With its continued delays in delivery, this has the potential to make the situation even more severe not just for Fareham Borough's vulnerable position on affordable housing land supply, but for the significant number of households currently on the Council's Housing Register⁵.
- 4.87. The Government's figures indicate that in 2020 there were 1,082 households on the Council's Register. It is evident that there is a significant need for additional affordable homes.
- 4.88. Paragraph 59 of the NPPF requires that needs of groups with specific housing requirements to be addressed. Paragraph 61 confirms that one of the specific groups relates to those requiring affordable housing.
- 4.89. Although the Council publishes details of its planning commitments for housing, there is no information on the extent that those sites forming parts of its supply will deliver affordable housing to either address the current deficit of 1,330 dwellings or ensure that this does not increase in the future.
- 4.90. The failure to meet the identified needs of affordable housing is a dire situation indicating that the Authority is not fulfilling the objectives in paragraph 59 of the NPPF.
- 4.91. A step change in the delivery of affordable housing is therefore required if the Council is to get anywhere near the identified need in the SHMA and begin to address the dysfunctions of the local housing market. Such a step change would be consistent with the thrust of paragraph 59 of the NPPF, to boost significantly the supply of housing.
- 4.92. The acute affordable housing need reinforces the merits of the Appeal Scheme with the on-site provision of 90 affordable dwellings.

⁵ [Local authority housing statistics data returns for 2019 to 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

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- 4.93. The Appellant considers substantial weight is attributable to the benefits associated with the provision of affordable housing.

The Emerging Draft Fareham Borough Local Plan

- 4.94. Fareham Borough Council is currently working on a replacement Local Plan.
- 4.95. Once adopted the Local Plan will supersede the Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites & Policies) and will provide the policy basis for the determination of future planning applications. It will also establish the overall housing requirement to be met during the **plan period to 2037** as well as the spatial strategy and site-specific allocations of land for housing.
- 4.96. The Issues and Options Consultation Document “Fareham Today – Local Plan Update – June 2019” identified a need to plan for a minimum of 520 dwellings per annum. This was derived from the application of the Government’s Standard Method (“SM”) using the 2014-based household projections.
- 4.97. This compares with the 452dpa requirement that was advanced in the earlier Regulation 18 draft consultation held in 2017 (11,300/25yrs) – which draft included the proposed allocation of the Appeal Site for 225 dwellings under Policy HA5.
- 4.98. The 452dpa requirement figure advanced in the Regulation 19 consultation draft Local Plan was based on a level of housing need in the Government’s consultation draft revisions to a potential revision to the standard methodology that the Government consulted upon in August 2020. However, and prior to the consultation deadline for the receipt of comments upon the Regulation 19 draft Local Plan, the Government confirmed the use of the existing standard methodology. This results in a requirement for 508 net additional dwellings per year within Fareham Borough of Borough.

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- 4.99. As acknowledged in a Statement by the Council's Executive Leader on 1st February 2021, the intention is that a further consultation will take place on changes to the Publication Local Plan in early summer (after the necessary technical work has been undertaken). The announcement also confirmed that the Council's Local Development Scheme ("LDS") will need to be revised and presented to Members for pre-scrutiny, Executive approval and then Council sign-off (during late spring).
- 4.100. Currently, there is no published update to the LDS. As such, there is no confirmed timetable for reviewing the Local Plan and no solution to meeting the additional housing need from that proposed in the earlier consultation draft Local Plan.
- 4.101. Although the Appeal Site was not carried forward as a housing allocation in the Publication (Regulation 19) draft Local Plan⁶ (Nov 2020) including on the basis that the housing requirement set out therein was based upon the Government's August 2020 consultation to the SM which would have resulted in a requirement for only 403dpa, that justification has fallen away on account of the Executive Leader's announcement. As such, it remains to be seen how the Council intend to address the shortfall.
- 4.102. However, and what is clear, is that the Local Plan is not expected to be adopted any time soon. In the interim, the existing policies for the supply of housing are out of date and nor can the Council demonstrate a five year supply of deliverable housing land.
- 4.103. For the reasons set out above, and in accordance with the approach set out at paragraph 48 of the NPPF, the emerging Local Plan can only be afforded limited weight as a material consideration.

⁶ https://www.fareham.gov.uk/have_your_say/consultation/localplanreg19

5. ACCEPTABILITY OF THE APPEAL SCHEME: THE CASE FOR THE APPELLANT

5.1. This section of the Planning Statement deals with the detailed aspects of the application proposal.

5.2. Based upon the reasons for refusal as set out in the Council's decision notice dated 21st September 2020, the main issues are considered to comprise the following:

1. Five Year Housing Land Supply
2. Landscape Impact
3. Ecology: (i) European sites and Habitats Regulations Assessment – refusal grounds b and h; (ii) other ecological matters – refusal ground d; and (iii) paragraph 177 of the NPPF
4. Highways Impact and Safety
5. Surface Water Drainage
6. Agricultural Land quality
7. Planning Obligations
8. Conformity with Policy DSP40
9. Planning Balance

5.3. The Appellant expects to call a total of 6 no. witnesses to deal with these main issues.

5.4. The case for the Appellant in relation to these issues is summarised in turn below.

Five Year Housing Land Supply

5.5. Whilst it is common ground that the Council is unable to demonstrate a five year supply of deliverable housing land, there is dispute between the parties as to the extent of the deficit. This is of particular relevance in this instance given the aforementioned judgments concerning the weight to be attached to the extent of the deficit in assessing the merits of housing delivery from an appeal scheme.

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- 5.6. The Council's latest position is set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 5.7. However, and based upon our assessment of site deliverability, we are of the view that the deficit is substantial, at **a circa 1 year supply of deliverable housing land.**
- 5.8. The Appellant reserves the right to review the five year housing land supply case on account of the publication of more recent information should that materialise from the Council prior to the exchange of evidence. The Appellant will also seek to advance a Housing Land Supply Statement of Common Ground with the Council, thus narrowing the issues between the parties in this issue and saving time and resources at the inquiry.
- 5.9. Given the lack of a five year supply of deliverable housing land, the presumption in favour of sustainable development at paragraph 11(d) of the NPPF is engaged. This lack of supply also engages the assessment criteria at Policy DSP40 of the Local Plan Part 2 which allows for development beyond the settlement boundaries subject to the scheme(s) satisfying the criteria set out in the Policy.

Landscape Impact

- 5.10. The Appeal Scheme was accompanied by a landscape and visual assessment and no objections are raised by the Council, its officers or statutory consultees in relation to the landscape impact of the scheme.

- 5.11. Given the operation of Policy DSP40, rather than CS14 or DSP6, the acceptability of the Appeal Scheme falls to be assessed under criterion (iii) where the test is that schemes should be designed to minimise any adverse impact on the countryside.
- 5.12. As set out at paragraph 8.37 of the Officer Report to Committee (16 Sept 2020), it is accepted that the visual and landscape effects of the development could be successfully minimised by a positive design response and landscaping strategy at reserved matters stage. Moreover, there is no specific landscape reason for refusal. However, landscape impact is implied on account of the Council's reason for refusal (a) and the Appellant will call a landscape witness to deal with the acceptability of the Scheme in landscape terms.
- 5.13. It is the Appellant's case that the proposal satisfies the requirements of policy DSP40.

Ecology

- 5.14. Paragraphs 8.18 to 8.29 of the officer report to committee set out the LPA's consideration of the ecological context. This is also expanded upon at paragraphs 8.40 to 8.44 and is also set out in the planning balance section at paragraph 8.62 onwards.
- 5.15. These considerations have resulted in the Council's imposition of three ecological reasons for refusal at (b) and (d) and (h) of the decision notice.
- 5.16. These matters are addressed in three parts below.

(i) *European sites and Habitats Regulations Assessment – refusal grounds b and h*

- 5.17. The Council’s reason for refusal “b” states that *“the proposal fails to appropriately mitigate the likely adverse effects on the integrity of European protected sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders”*.
- 5.18. The Council’s reason for refusal “h” states that *“in the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of the European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance”*.
- 5.19. Both of these reasons relate to potential impacts of the development at the Appeal Site on European sites.
- 5.20. As the competent authority, the Inspector must conduct a Habitat Regulations Assessment of the development proposal under regulation 63 of the Conservation of Habitats and Species Regulations 2017.
- 5.21. The Inspector will be able to conclude under regulation 63(5) that, based on all the evidence, this development will have no adverse effect on the integrity of any European site either alone or in combination with any other plan or project. As such there is no European site constraint to the grant of planning permission for this development.
- 5.22. The Appellant will provide a shadow Habitat Regulations Assessment to assist the Inspector *in relation to this*.

Reason for refusal b

- 5.23. The Council's reason for refusal "b" states that *"the proposal fails to appropriately mitigate the likely adverse effects on the integrity of European protected sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders"*.
- 5.24. The Appellant's case is that there will be no adverse effect on the integrity of any European site from this development either alone or in combination with any other plan or project through development on, or loss of, Brent geese or wader foraging or roosting habitat at the Appeal Site.
- 5.25. The Appeal Site is not land which provides a "functional linkage" or "functional support", in terms of foraging or roosting habitat, for the waders or Brent geese which are the qualifying features of relevant European sites. As such, the development of housing on part of the Appeal Site will not alone adversely affect the integrity of any European site through loss of wader or Brent goose foraging or roosting habitat, nor is there any possibility of an in combination effect.
- 5.26. Under Policy DSP14, a distinction is drawn between "important sites" and "uncertain" sites for Brent geese / waders, both located outside the boundary of European sites. The Local Plan supporting text (4.41) states that development which could impact "important" SPA supporting bird sites will need to be assessed in order to understand the level of impact and, where required, suitable avoidance and mitigation measures will be sought and a programme for the implementation of those measures put in place. For development which could impact sites of "uncertain" value, the supporting text states that site surveys will need to be undertaken to determine their level of importance. This distinction is also reflected in the wording of DSP14.

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- 5.27. In addition, and under the Fareham Local Plan interactive Policies Map⁷ the Appeal Site is categorised as an “uncertain” site for Brent geese and waders (it is not identified as an “important” site).
- 5.28. In accordance with Policy DSP14 the Appellant’s ecologists have obtained two years of bird survey data at the Appeal Site from 2014-15 and 2016-17. Both years demonstrate that the Appeal Site is not land which is functionally linked to any European site and that the Appeal Site is not an “important” site for waders or Brent geese. Further visits have also been undertaken at the Appeal Site in 2020-21 and the results are again consistent with the data from 2014-15 and 2016-17. Further surveys in 2017-18 or 2018-19 were not necessary given the data from the previous years and that the Appeal Site does not provide suitable habitat for Brent geese or waders (see next paragraph).
- 5.29. A Habitats Regulations Assessment must be conducted “*in light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project*”⁸. Natural England has also been clear in its correspondence relating to the application (for example letter 26 August 2020) that the focus must be on the “current ecological function” of the Appeal Site and the Council agrees with this approach (paragraph 8.25 Committee report). Due to its agricultural management and disturbance the Appeal Site does not provide suitable habitat for Brent geese or waders and this has been the case since at least 2015 and in previous years too.
- 5.30. There is no credible evidence of any real (rather than merely hypothetical) risk⁹ of loss of future potential Brent geese/wader functionality through housing on the Appeal Site because there is no prospect that the Appeal Site would or will or could be managed in the future to provide suitable habitat for the Brent geese

⁷ https://www.fareham.gov.uk/planning/local_plan/interactivepropmap.aspx, accessed 17 March 2021

⁸ Paragraph 49 *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij* C-127/02

⁹ Paragraph 37 of *R (on the application of Boggis) v Natural England* [2009] EWCA Civ 1061

or wader qualifying features of any European site. Loss of theoretical *future* functionality is not a valid basis for concluding a negative assessment on European site integrity under a Habitats Regulations Assessment.

- 5.31. The identification of the Appeal Site as a “Primary Support Area for Brent geese and waders” is at the centre of the Council’s ground b refusal. The term “Primary Support Area” derives from the “Solent Waders and Brent Goose Strategy: Guidance on Mitigation and Offsetting Requirements 2018” (“2018 Mitigation Guidance”).
- 5.32. Natural England has stated in its correspondence that the Appeal Site is a Primary Support Area. However the basis for this is unclear. There is no evidence in the 2018 Mitigation Guidance itself that the Appeal Site is a “Primary Support Area” (the 2018 Mitigation Guidance does not provide any list of the sites which are regarded as “Primary Support Areas”). The Appellant has been unable to identify any other Solent Waders and Brent Goose Strategy report or document stating that the Appeal Site is a Primary Support Area. Furthermore, on close examination of the 2018 Mitigation Guidance criteria and the bird data available for the Appeal Site, the term “Primary Support Area” is *not* applicable to the Appeal Site.
- 5.33. Even if the Appeal Site *were* a Primary Support Area, the 2018 Mitigation Guidance defines this term as a site which “*when in suitable management, makes an important contribution to the function of the Solent and Waders and Brent goose ecological network*”. As noted above the Appeal Site is not in suitable management and has no prospect whatsoever of becoming so.
- 5.34. The 2018 Mitigation Guidance identifies specific “Core Areas” of land outside European sites as being the category of sites under the 2018 Mitigation Guidance which, when threatened by a risk of potential damage or deterioration, will trigger the Habitats Regulations Assessment screening test and be subjected to appropriate assessment in order to ascertain whether an adverse effect on the site integrity can be excluded. There has been no suggestion from any person that the Appeal Site is such a “Core Area” and there is no data to support this. The Guidance makes no similar comment as

regards Primary Support Areas. This is consistent with the fact that loss of theoretical *future* functionality (which is in essence the definition of a Primary Support Area) is not a valid basis for concluding a negative assessment on European site integrity under a Habitats Regulations Assessment.

- 5.35. Since the development of housing on part of the Appeal Site will not, alone or in combination, adversely affect the integrity of any European site through loss of foraging or roosting habitat of qualifying bird features outside the boundary of European sites, no mitigation measures are required to address this potential pathway of impact. The Appellant nevertheless proposes a comprehensive ecological enhancement package, to be delivered in perpetuity within the redline boundary of the Appeal Site.
- 5.36. The proposed ecological enhancement is to provide, in perpetuity, a bird reserve within the southern section of the red line boundary of the Appeal Site, nearest to the closest European site. The reserve will cover an area of 4.2 hectares. 3.7 hectares of this is designed for Brent geese and waders and will provide a lush improved grassland with a nitrogen rich clover and grass sward. A “scrape” will be included as a freshwater resource to enhance the habitat for Brent geese and waders. The remaining 0.5 hectares is designed to support a high diversity of bird species and provide habitat enhancements for other protected and priority species identified at the Appeal Site. This area will include three freshwater ponds, a sand martin and kingfisher nest bank, wet species-rich grassland and scrub and hedgerow planting. The entire bird reserve will be protected by a security fence and ditch to prevent human / predator access to the reserve. There will be a narrow buffer between the northern boundary of the reserve and new houses to the north. The bird reserve will be provided prior to the commencement of construction work.
- 5.37. The Appellant will demonstrate, through examination of existing comparable sites in terms of size, openness and proximity to urban populations, that the bird reserve would be suitable for use by Brent geese and waders. This information will be included in the shadow HRA and revised ES.

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- 5.38. This package amounts to an enhancement and net gain for biodiversity generally, including for qualifying bird species of European sites, when compared against the existing 12.25 hectares at the Appeal Site containing unsuitable habitat for Brent geese and waders.
- 5.39. Even though, as explained above, the enhancement package is not required for Habitat Regulations Assessment purposes, this package also puts beyond any doubt that the development will have no adverse effect alone or in combination with other plans or projects on the integrity of any European site through housing on part of the Appeal Site.
- 5.40. Even if Natural England were correct to identify the Appeal Site as a “Primary Support Area” (as above, the Appellant considers this to be incorrect) the Appellant’s proposed package meets the requirements of the 2019 Mitigation Guidance in respect of Primary Support Areas because the document states that *“the options for off-setting impacts on Primary Support Areas will be considered on a case-by-case basis”* to ensure the *“continued ecological function of the wader / Brent goose site is maintained and enhanced”*.
- 5.41. The bird reserve will be managed in perpetuity through an appropriate third party organisation in accordance with management, maintenance and monitoring prescriptions to be included in a Landscape Environmental Plan (“LEMP”) to be provided to the Inspector, with funding in perpetuity to be secured via a s106 agreement.

Reason for refusal h

- 5.42. The Council’s reason for refusal “h” states that “in the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of the European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance”.

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- 5.43. An agreement under s106 Town and Country Planning Act 1990 will be entered into by the Appellant requiring the Appellant to make financial contributions to address any recreational impact of the development on European sites in accordance with Solent Recreation Mitigation Strategy (dated December 2017) (the "SRMS").
- 5.44. The SRMS was adopted by the Council in March 2018. The SRMS sets out the Council's approach to avoidance and mitigation measures in respect of recreational disturbance from development of European sites around the Solent. The SRMS specifies that implementation of mitigation measures and monitoring of their effectiveness will be funded by developer contributions equivalent to £564 per dwelling (although the final sum to be charged for a proposed development will be assessed on a sliding scale based on bedroom numbers per dwelling). The SRMS also states that the Council may decide which legal mechanism to use to secure the developer contributions, either a section 111 Local Government Act 1972 agreement or a section 106 Town and Country Planning Act agreement.
- 5.45. By securing, through a s106 agreement, payment of the necessary contributions under the SRMS, the proposed development, considered both alone and in combination with any other other plans or projects, will not adversely affect the integrity of any European site as a result of any recreational disturbance.
- (ii) *Other ecology matters - refusal ground d*
- 5.46. The Council's reason for refusal "d" states that "*the proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced*".
- 5.47. The Appeal Site was subject first to an Ecological Appraisal in 2016 and then to comprehensive ecological surveys in 2016, 2017 and 2018. These ecological surveys will be updated in the coming months of 2021.

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- 5.48. The 2016 / 2017 / 2018 surveys identified the presence of badgers, bats and reptiles at the Appeal Site. Dormice were not found to be present, nor were Brent geese or waders.
- 5.49. Any construction or operational impacts from the development on these ecological receptors can and will be fully mitigated through measures incorporated in the 4.2 hectare ecological enhancement area within the Appeal Site described above and in the further area of approximately 1.4 hectare of open space to be provided to the west of the Appeal Site. Full details of any impacts and mitigation measures will be provided in an updated Environmental Statement.
- 5.50. The Appellant will also provide to the Inspector:
- 5.51. a Construction and Environmental Management Plan (CEMP) – this will set out all mitigation measures in relation to any impacts on any ecological receptors present at the Appeal Site from the construction phase of the development; and
- 5.52. a Landscape and Ecological Management Plan (LEMP) – this will set out detailed management, maintenance and monitoring prescriptions for all greenspace areas within the redline boundary of the Appeal Site that provide habitat of biodiversity value.
- (iii) *Paragraph 177 NPPF*
- 5.53. Paragraph 8.64 of the officer’s report adds that as officers judged that the Appeal Scheme proposals were contrary to adopted Local Plan policies and the policies of the NPPF, they decided not to undertake an Appropriate Assessment (“AA”) under regulation 63 of the Conservation of Habitats and Species Regulations 2017. Accordingly, and on their approach, Officers then used paragraph 177 of the NPPF to ‘disapply’ the presumption in favour of sustainable development set out at Paragraph 11 of the NPPF.

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- 5.54. The Appellant considers this approach to be in error. Paragraph 177 only disapplies the presumption in 11(d) if *upon undertaking an AA* the decision maker cannot conclude favourably in respect of the proposal. In such circumstances, the Habitat Regulations would require a refusal of permission in any event and so the operation of the presumption in 11(d) would, in practice, not arise.
- 5.55. Given the Council did not undertake an AA, it is not in a position to state that paragraph 177 operates against the Appeal Scheme.
- 5.56. As already noted above, regulation 63 of the Conservation of Habitats and Species Regulations 2017 presents no constraint to the Appeal Scheme..

Compliance with development plan policies

- 5.57. The proposed development at the Appeal Site is fully in accordance with the development plan in relation to ecological and environmental matters.
- 5.58. Policy DSP 13 is met because, given the above, the development will ensure that:

“i. designated sites and sites of nature conservation value are protected and where appropriate enhanced;

ii. protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;

iii. where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and

iv. The proposal would not prejudice or result in the fragmentation of the biodiversity network”.

- 5.59. Furthermore Policy DSP13 provides that *“enhancements that contribute to local habitat restoration and creation initiatives as set out in the Hampshire Biodiversity Action Plan (or other similar relevant document) will be supported”*. The proposed development will provide enhancements giving rise to an overall

net gain in biodiversity exceeding 10% compared with the existing at the Appeal Site.

- 5.60. The proposed development is fully in accordance with Policy DSP14 (Supporting Sites for Brent Geese and Waders) because Policy DSP14 states that development on 'uncertain' sites for Brent geese and/or waders may be permitted where studies have been completed that clearly demonstrate that the site is not of 'importance'. As explained above, the data shows that this site is not "important".
- 5.61. The proposed development will be fully in accordance with Policy DSP15 (Recreational Disturbance on the Solent Special Protection Areas (SPA)) by, as above, making an appropriate financial contribution in accordance with the SRMS (and no *direct* effects on any European designated site will arise from this development).
- 5.62. For all the reasons above the environmental aspects of Policy CS4 (Green Infrastructure, Biodiversity and Geological Conservation), CS15 (Sustainable Development and Climate Change), CS16 (Natural Resources and Renewable Energy), DSP2 (Environmental impact) and DSP40 (Housing Allocations) are also all met.

Highways Parking and Safety

- 5.63. As set out in the Officer Report to Committee, there is no objection from County Highways. Rather, their consultation response recommended the grant of planning permission subject the imposition of appropriately worded conditions as well as securing an off-site transport contribution in the sum of £1,126,252 towards the following:

- Improvements in the vicinity of Delme Roundabout (£12,323)
- Improvements in the vicinity of Downend Rd/ A27 (£60,350)
- Cornaway Lane Roundabout cycle improvements (£907,179)
- Footway widening in the vicinity of the site (£18,000)
- Walking audit measures (£37,400)
- School Travel Plan (£85,000)
- Beaulieu Avenue parking restriction TRO contribution (£6,000)

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- Payment of the Travel Plan approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan.
- 5.64. The Appellant will secure the required mitigation by entering into a section 106 legal agreement.
- 5.65. As set out in the County highways response, there is no objection to the Scheme in relation to highway safety and/or in relation to the imposition of parking restrictions (by means of a Traffic Regulation Order (to be secured by means of a Grampian condition)) at the junctions of Beaulieu Avenue/Romsey Avenue and at the site access/Romsey Avenue. The no objection comment is also specific in relation to the issue of displaced parking.
- 5.66. Overall, and as set out in the consultation response, together with the LPA's analysis of the sustainability merits of the Appeal Scheme in locational terms, there is no substantiated objection to the Scheme in this regard. These matters will of course be addressed in evidence thus addressing reason for refusal (c).
- 5.67. For these reasons, the Appeal Scheme is acceptable having regard to the wording at policies CS5, CS15, CS20 and DSP40.

Surface Water Drainage

- 5.68. Reason for refusal (e) states that the proposal failed supervised sufficient information to demonstrate the satisfactory disposal of surface water.
- 5.69. Paragraph 8.44 of the Officer Report for Planning Committee refers to the objection to the Scheme from the Lead Local Flood Authority ("LLFA") Hampshire County Council ("HCC"). They raised concerns about the proposed use of infiltration as a means of surface water disposal for the development. The LLFA submitted that insufficient information had been provided to demonstrate that infiltration would be suitable for this site. As such, the Report concludes that the proposal fails to provide for the satisfactory disposal of surface water contrary to Local Plan Policy DSP2.

- 5.70. Post registration of the application, further intrusive ground investigation was undertaken by Soils Limited in July 2019, reference 17507/SL, and included infiltration testing at numerous locations across the site with both shallow and deep testing undertaken at each location, in line with BRE DG365:2016 Soakaway Design requirements.
- 5.71. In July 2020, HCC acting as the LLFA requested in a letter, with reference SWM/2018/0806 Response 3, that the drainage strategy be updated in line with the aforementioned soil infiltration information. The drainage strategy drawing, reference 5611.407, was produced and submitted using the latest soil information and infiltration testing results.
- 5.72. HCC responded with letter reference SWM/2018/0806 Response 4 dated 4th September 2020 stating that infiltration has not been proven as a suitable means of surface water disposal for the site, citing changes in ground strata at the infiltration basin locations and unsuitable infiltration rates.
- 5.73. Whilst the Appellant considers sufficient information has been provided in order for the matter to be addressed by means of an appropriately worded condition(s), further information can be provided through the appeal process, with matters addressed in a Drainage Statement of Common Ground if an agreement can be reached.
- 5.74. In this regard, soil information and associated infiltration rates for each stratum can be provided along with the depths of the infiltration basins as requested. However, the infiltration testing undertaken to date has shown that sufficient infiltration can still be provided at deeper levels below existing ground levels. Furthermore, groundwater was not encountered and it is considered that at 1m clearance between the base of the infiltration basins and groundwater levels can be provided.

Agricultural Land Quality

- 5.75. For the reasons set out in the Agricultural Land Considerations (“ALC”) Report submitted with the Appeal Scheme (see list of essential supporting documents), it is the Appellant’s case that only limited weight should be given to what is a minor adverse effect resulting from this loss.

Planning Obligations

- 5.76. Matters of detail, including in relation to the likely financial contributions are to be agreed as part of the Council’s determination of the application.

- 5.77. Subject to meeting the necessary tests at paragraph 56 of the NPPF, it is considered that the following may be provided for in legal agreement:

- i. Affordable Housing (40%)
- ii. Community infrastructure contribution for the provision and/or improvement of community infrastructure facilities within the locality of the site
- iii. In perpetuity funding for the Bird Conservation Area
- iv. Footpath works contribution
- v. Primary education
- vi. Public open space provision
- vii. Secondary education
- viii. Solent Disturbance Mitigation
- ix. Sustainable Transport

- 5.78. If a satisfactory legal agreement is completed securing the necessary contributions for on and off site provision of facilities and infrastructure, this would address the requirements at policies CS4, CS5, CS16, CS18, CS20, DSP3 and DSP15.

Policy DSP40: Housing Allocations

- 5.79. As set above, this policy is engaged and is to be applied to the determination of planning applications for housing on land outside the urban area in situations where the Council is unable to demonstrate a five year supply of deliverable housing land.
- 5.80. In the circumstances, including the lack of a landscape objection, the Council's continued inability to demonstrate a robust five year housing land supply position, triggers the operation of policy DSP40 which, was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6, to permit development in breach of those policies when the Council could not demonstrate a 5 year housing land supply.
- 5.81. As accepted by the Council in various appeals and committee reports (assessing applications on land outside the urban area), compliance with the five criteria in DSP40 means that the development in question can be concluded to be in accordance with the development plan *taken as a whole* notwithstanding a location outside the settlement boundaries or within the gap designation.
- 5.82. The Appeal Scheme satisfies the requirements at criteria (i) to (v) of Policy DSP40 on account of the following:
- 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 settlement boundary, and can be well integrated with the neighbouring settlement;
 - iii. The proposal can be sensitively designed to minimise any adverse impact on the countryside;
 - iv. The proposal is deliverable in the short term (controlled as it is by a housing developer with considerable experience in the local market); and

- v. The proposal would not have any unacceptable environmental, amenity or traffic implications.
- 5.83. As set out in the Officer Report for Committee (16 Sept 2021), it is accepted that parts (i), (ii), (iii) and (iv) are satisfied (paragraphs 8.32 to 8.38 of the Report refer).
- 5.84. However, the Council does not consider that the Scheme accords with part (v) (paragraph 8.39 of the Report refers).
- 5.85. That said, the Report accepts there is no concern in relation to amenity or highways. As such, and when all of the technical evidence is considered, the only issue in dispute between the Appellant and the Council is the conformity or otherwise of the Appeal Scheme with elements the 'environmental' component of DSP40(v), which considerations are limited to the Council's concerns with the Scheme in relation to (1) SPA matters, (2) on-site ecology; and (3) loss of BMV agricultural land¹⁰. These matters are addressed and confirmed at paragraph 8.39 onwards of the officers report. The case for the Appellant is that it does, such that the Appeal should be allowed as being in conformity with the Development Plan when taken as a whole.
- 5.86. However, and even were the considered to be a minor conflict with an element of Policy DSP40, it is evident that the many economic, social and environmental factors weigh heavily in support of the scheme in a situation where the policies for the supply of housing are out of date thus triggering the presumption in favour of sustainable development at paragraph 11 of the NPPF.

The Planning Balance: Assessing Sustainability

- 5.87. This section assesses the significant merits of the scheme in relation to the three sustainability tests set out at paragraph 8 of the NPPF and clearly shows that whilst there are considered to be some slight adverse impacts, these

¹⁰ It is accepted by the Council that loss of BMV agricultural land is not sufficient to warrant a refusal of the Appeal Scheme in its own. Rather, this is a matter the Council have applied to the negative side of the planning balance

considerations are plainly incapable of outweighing, let alone significantly and demonstrably outweighing, the many benefits of the scheme.

- 5.88. Paragraph 9 of the NPPF states (amongst other things) the assessment of the sustainability roles should not be undertaken in isolation, because they are mutually dependent.
- 5.89. A planning balance exercise has been carried out in accordance with the guidance at paragraph 9 of the NPPF and sets out a combined analysis in relation to the sustainability roles (economic, social and environmental).

Economic

- 5.90. The Appeal Scheme satisfies the economic role of sustainability including through the provision of housing to support growth and the associated provision of infrastructure, to be secured through preparation of the S106 agreement and by on-site provision of affordable housing.
- 5.91. The Appeal Scheme generates a series of local and Borough-wide economic benefits including through (i) construction of the scheme and the range of employment generated as a result; and (ii) the on-going expenditure from the households purchasing and occupying the new homes.
- 5.92. The principal economic benefits arising from the scheme are summarised below:
- (i) Increased house building in an area where there is a demand for new housing that in turn drives economic growth further and faster than any industry. In this regard the proposals will contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is being made available in the right place and at the right time to support growth.
 - (ii) The provision of 225 new homes in the Borough where there is an established need for housing given the demonstrable shortfall in the five year housing land supply position.
 - (iii) The application scheme will deliver much needed affordable homes that will meet the acute need for affordable housing within the Borough.

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- (iv) Meeting general housing needs is a significant benefit, consistent with the Government's objective of significantly boosting the supply of housing.
 - (v) In order for the economy to function, sufficient housing is required in the right locations and at the right time. This site represents a location where there would be no significant impact upon the landscape nor on the amenity of neighbouring properties.
 - (vi) Based upon a multiplier of 2.3 jobs per new home¹¹, the 225 dwellings are estimated to create approximately 518 new jobs.
 - (vii) Increased expenditure in the local area will support local FTE jobs.
 - (viii) Helping to deliver a significant boost to the local economy through 'first occupation' expenditure of £1,228,950¹². This is expenditure on new furniture and other household goods that residents spend as 'one-offs' when moving into a new home.
 - (ix) In terms of household expenditure, data from ONS Family Expenditure Survey 2019-20¹³ shows that the 'average UK household spend' is £585.20 per week (Table A33) (or £30,514 per year), whereas in South East England it is 19.4% higher than the UK average (Table A33). This means average weekly spend per household is £698.60 (or £36,406 per annum). For the Appeal Scheme, the total gross expenditure is estimated to be £8.2m per year to the economy. A proportion of this household expenditure is anticipated to be spent in local shops and services and will help sustain the existing services in Fareham. The expenditure will include that a proportion of that spent on areas including food & non-alcoholic drinks (£68.70 per week); alcoholic drinks (£12.70 per week); recreation and culture (£103.70 per week), household goods and services (£46.40) and miscellaneous goods and service i.e. hairdressing & beauty treatments (£54.10 per week).¹⁴ Given the current economic challenges facing the UK these are significant economic benefits.

5.93. By providing land of the right type, in the right place, and at the right time to support economic growth, the development of 225 no. dwellings on the site satisfies the objectives at paragraph 8 of the NPPF and assists in the aims of the NPPF in helping to build a strong and competitive economy.

¹¹ See page 13 of the Homes Builders Federation "Economic Footprint of UK Housebuilding " (July 2018) - https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018LR.pdf

¹² Research carried out by OnePoll on behalf of Barratt Homes (August 2014); <https://www.barratthomes.co.uk/the-buying-process/home-buying-advice/>) which shows an average of £5,462 per dwelling.

¹³ [Family spending workbook 3: expenditure by region - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-in-work/family-spending-workbook-3-expenditure-by-region).

¹⁴ Figures based upon SE Regional data in Table A33

- 5.94. This is further emphasised in the Government's November 2011 Paper 'Laying the Foundations: A Housing Strategy for England' where paragraph 11 states *"getting house building moving again is crucial for economic growth – housing has a direct impact on economic output, averaging 3 per cent of GDP in the last decade. For every new home built up to two new jobs are created for a year"*.
- 5.95. The economic benefits are to be accorded substantial weight in the planning balance.

Social

- 5.96. The Appeal Scheme satisfies the social role, in helping to support strong, vibrant and healthy communities, including through providing the supply of housing required to meet identified needs in open market and affordable sectors. This is a significant benefit. In addition;
- 1) Future residents will be in an easy walking and cycling distance to a wide range of other uses including the shops and services in Fareham/Portchester.
 - 2) The Application Scheme will provide a range of housing types and size, including 90 affordable dwellings (40%)
 - 3) The scheme secures high quality residential environment consistent with development plan policy.
- 5.97. The details of the layout and house type design are to be agreed through the determination of a subsequent reserved matters application, with the detailed scheme to reflect the particular need for housing at that time.
- 5.98. Overall, the social benefits of the scheme can be afforded substantial weight in the overall planning balance.

Environmental

- 5.99. In terms of the environmental role, the Appeal Site is not located on land designated for its landscape value. As set out above, the Appeal Scheme will

not have any adverse impact on ecological receptors, and will in fact enhance the biodiversity characteristics of the Appeal Site, providing a net gain for biodiversity of more than 10% compared with the existing baseline and including the provision of a Bird Conservation Area as enhancements for Brent geese and waders.

- 5.100. The retention of existing boundary trees and hedges around the Appeal Site and the sensitive set back of the development preserves the immediate outlook from neighbouring residential properties.
- 5.101. The proposals would deliver sustainable homes allowing the fulfilment of this important objective whilst at the same time moving to a low carbon economy and securing an environmentally sustainable form of new residential development.
- 5.102. On the basis of the above, there are environmental benefits which would arise from the proposals, to which, on balance, moderate positive weight should be attached to in the overall planning balance.

6. SUMMARY AND CONCLUSION

Development Plan Compliance

- 6.1. The Appeal Scheme proposes an outline application for 225 dwellings, a bird conservation area and area of public open space, with access to be determined on land to the south of Romsey Avenue, Fareham.
- 6.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement for planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 6.3. In this instance, and by operation of Policy DSP40 of the Local Plan Part 2, the Appeal Scheme is in accordance with the development plan when it is considered as a whole. As such, and pursuant to s.38(6) planning permission should be granted.
- 6.4. However, either of (i) the lack of consistency between the housing requirement and settlement boundaries with the NPPF; or (ii) the lack of a deliverable five year supply of deliverable housing land triggers the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 6.5. On the basis of the foregoing, whilst under the application of 38(6), there is a *prima facie* conflict with development plan policies CS2, CS14 and DSP6, in so far as the proposal accords with the provisions at Policy DSP40, it is the case for the Appellant that the Appeal Scheme accords with the development plan when taken as a whole.
- 6.6. As confirmed in the Navigator, Cranleigh Road and Sawmills appeal decisions, the spatial policies for the supply of housing in the Core Strategy and Local Plan Part 2 are out of date (on account of their lack of consistency with the NPPF). This included in relation to the housing requirement and settlement boundaries.

- 6.7. In addition, the settlement boundaries upon which policies CS14 and DSP6 operate are out of date by virtue of having been drawn to accommodate non-NPPF compliant development needs, quite apart from issues of 5 year land supply. All this goes to reduce the weight of any breach identified.
- 6.8. The Council has approved numerous planning applications on land beyond the settlement boundaries as defined in the development plan in order to meet identified housing needs. This remains the case in terms of seeking to meet housing needs as part of the preparation of the emerging Local Plan, which proposes the allocation of sites for housing beyond the settlement boundaries defined in the 2011 Core Strategy and 2015 Local Plan Part 2. In the meantime, Local Plan Part 2 Policy DSP40 provides the framework for judging planning applications for unallocated sites beyond the settlement policy boundaries where, as here, the LPA cannot demonstrate a five year supply of deliverable housing land.
- 6.9. On the basis of the foregoing, the weight to be attached to the conflict between the Appeal Site and its location adjoining but ultimately beyond the settlement policy boundary for Portchester is significantly reduced.
- 6.10. In addition, the Appeal Site is outside of the settlement boundary. However, the lack of a five year supply of deliverable housing land triggers the operation of policy DSP40 which was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6, to permit development in breach of those policies when the Council could not demonstrate a 5 year housing land supply.
- 6.11. Consequently, although there will always be a breach of CS14 and DSP6, compliance with exception policy DSP40 should be given more weight and permission should be granted and the proposal accords with the development plan taken as a whole.

Summary

- 6.12. The Appeal Scheme is of a scale in keeping with the settlement, well-related to the existing built form, and minimises its impact upon the receiving landscape.
- 6.13. The Scheme provides a sustainable location for housing, within walking distance to local services and facilities.
- 6.14. It represents a sustainable location for housing development to meet identified needs and development of the site in the manner proposed would result in an acceptable residential environment.
- 6.15. It provides for a mix housing types and tenures, including 40% affordable housing, helping to meet the identified need for new homes in Fareham Borough.
- 6.16. There is no constraint to the proposed development at the Appeal Site through the Conservation of Habitats and Species Regulations 2017 and enhancements for Brent geese and waders will be provided which is a benefit of the proposal. Any impacts on other ecological receptors can and will be avoided or mitigated. The Appeal Scheme will lead to an overall net gain for biodiversity exceeding 10% compared with the existing baseline.
- 6.17. The benefits are many and manifest, not least the provision of housing and affordable housing when the country and the Borough faces a housing crisis, which government policy is seeking to address. The site is sustainably located and its residents will bring a combined £8m per annum spend.
- 6.18. In the planning balance it is considered that the material considerations in favour of the scheme (provision of market and affordable housing, economic benefits, biodiversity benefits, landscape enhancement) outweigh the conflict with an out of date settlement boundary, and loss of Subgrade Grade 1 and Grade 2 BMV agricultural land.

- 6.19. The Appeal Scheme satisfies the economic, social and environmental roles of the NPPF and has been advanced following pre-application and has been amended to respond to the advice received.
- 6.20. For the reasons set out above, the Appellant will be requesting that the Appeal should be allowed.
