
**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 (AS AMENDED)**

**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**

**PROOF OF EVIDENCE RELATING TO TOWN
PLANNING, HOUSING NEED AND SUPPLY
MATTERS**

Prepared by:

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On behalf of:

Foreman Homes Ltd



PINS Ref: APP/A1720/W/21/3271412

LPA Ref: P/18/1073/FP

WBP Ref: 7671

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Woolf Bond Planning
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DOCUMENTS

- SB1** Air Quality Technical Note (Ensafe) (July 2021)
- SB2** Assessment of Noise from AFC Portchester – Technical Note (Temple) (July 2021)
- SB3** Analysis of the Council's Five Year Housing Land Supply Position

QUALIFICATIONS, EXPERIENCE

Steven Brown will say:

I hold a Bachelor of Science and Post Graduate Diploma in Town and Country Planning and I am a Member of the Royal Town Planning Institute.

I am a Principal of Woolf Bond Planning LLP – Chartered Town Planning Consultants and I have been engaged in town planning with 20 years' experience as a private consultant acting for major house builders, development companies, estates and private individuals. National house builder clients include Bargate, Barratt David Wilson Homes, Barwood, Bellway, City & Country, Crest, Croudace, Foreman Homes, Halsbury Homes, Persimmon Homes, Redrow Homes and Taylor Wimpey, as well as strategic land promoters, including Fairfax, CEG and LSL.

I have visited the Appeal Site and its surroundings and have examined the relevant plans and documents for the purpose of the Appeal.

The evidence which I have prepared and provide for these appeals in this proof of evidence, is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

1.0 Introduction

Scope of Evidence

- 1.1. My evidence addresses the town planning issues, five year housing land supply position, affordable housing need and overall planning balance with respect to the Appeal by Foreman Homes against the decision of Fareham Borough Council (“FBC”) 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. My assessment and planning balance has been informed by the evidence put forward by Mr D Wiseman (Highways), Mr P Whitby (European Protected Species) and Mr A Day (On-site Biodiversity).

The Reasons for Refusal

- 1.3. As set out in the Decision Notice dated 21st September 2020 (**CDC.4**), the Planning Application was refused for a total of 12 reasons 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.

- 1.4. As set out in the Council's informative accompanying the Decision Notice, matters (g) – (l) can be addressed by means of a legal agreement prepared under Section 106 of the Town & Country Planning Act 1990.
- 1.5. This leaves reasons (a) to (f) to be addressed in evidence.
- 1.6. As set out at paragraph 5.3 of the Planning SoCG, reason (e) (surface water drainage) is no longer being pursued. Paragraph 4.10 of the Planning SoCG also confirms that reason (f) (BMV) is not sufficient on its own to warrant refusal of the Scheme.
- 1.7. Reason (d) relates to a lack of information and is not a direct allegation of harm. In so far as further information/clarification is provided in the ecological evidence prepared by Mr Adam Day, it is considered this reason has been satisfied. The Council will be invited to clarify their position on this matter once they have considered the evidence.
- 1.8. In that scenario, that would leave reasons (a), (b) and (c) as the 'live' issues between the parties.

Addressing the Reasons for Refusal and Main Issues

- 1.9. In setting out my evidence, and addressing the Council's reasons for refusal, I rely upon accompanying evidence prepared on behalf of the Appellant which covers issues arising from the reasons for refusal and issues raised by third parties.
- 1.10. At the Case Management Call ("CMC"), the Inspector helpfully set out the following main issues to be addressed in evidence, which matters were agreed as follows:

1. Principle of development outside the settlement boundary
 2. The effect of the proposal on European Protected Sites
 3. Other Biodiversity considerations
 4. Parking and Highway safety
 5. Surface water drainage
 6. The loss of BMV agricultural land
 7. The housing land supply position
 8. Conformity with policy DSP40
 9. Planning obligations
 10. Overall planning balance
- 1.11. Separate from the main issues identified by the Inspector, and as discussed at the CMC, further matters raised by third parties include as follows:
- i. Effect of the proposal on air quality
 - ii. Environmental impacts during construction
 - iii. The impact of the existing sports facilities on the amenities on future occupants

Planning Statement of Common Ground

- 1.12. In order to assist the Inspector, and to reduce the issues to be addressed in evidence, the Appellant and FBC have sought, where possible, to agree a position on relevant matters. As such, separate Planning and Housing Land Supply SoCGs have been prepared.
- 1.13. As set out in the Planning SoCG (signed and dated 8 July 2021) (**CDD.1**), the matters now agreed between the Appellant and Fareham Borough Council are wide ranging and comprise as follows (unless stated, paragraph references in brackets relate to the content of the Planning SoCG):
1. It is agreed that the Appeal Site is in a sustainable location within walking and cycle distance from local services and facilities (Paragraph 2.1)

2. The Council is not able to demonstrate a five year supply of deliverable housing land. The shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant (Paragraph 3 of Executive Summary).
 3. By operation of footnote 7 of the NPPF, the most important policies for the determination of the Appeal are out of date. Subject to paragraph 177 of the NPPF, this triggers the presumption in favour of sustainable development as set out at paragraph 11(d) of the NPPF (Paragraph 3 of Executive Summary (and paragraph 2.3 separate Housing Land Supply SoCG)) (**CDD.2**).
 4. Whilst the Appeal Site is located outside the settlement policy boundary, it is by complying with the terms of policy DSP40 that proposed development for housing may overcome this in principle policy constraint Paragraph 3 of Executive Summary).
 5. Importantly, the Council accepts the Appeal Scheme satisfies criteria (i) to (iv) of Policy DSP40. Accordingly, the sole dispute between the parties in the context of DSP40 is in relation to part (v) with the Council's case purporting that this Scheme would have unacceptable environmental, amenity and traffic implications (Paragraph 3 of Executive Summary). These matters are addressed in evidence.
 6. The loss of BMV agricultural land alone would not be sufficient to warrant the refusal of planning permission, but remains a matter to be weighed as a harm in the overall planning balance (Paragraph 4.10).
- 1.14. It is my position that were the Inspector to conclude the Appeal Scheme complies with the terms of policy DSP40, it would be in conformity with the development plan when taken; thus engaging paragraph 11 (c) of the NPPF

Principle of Development outside the Settlement Boundary (Reason (a))

- 1.15. My evidence explains by way of the application of paragraph 11 of the Framework, the policies which are most important for determining the application, save for the flexibility afforded by Policy DSP40, are out of date. This includes the spatial application of policies predicated on an out of date housing requirement (*Hopkins Homes*) that pre-date even the 2012 Framework; and the fact that the Council is unable to demonstrate a five year supply of deliverable housing land.

- 1.16. It is my evidence for this inquiry that in circumstances where the DSP40 contingency policy is triggered, the weight attributable to conflicts with other policies of the development plan would be reduced and would be outweighed by compliance with Policy DSP40.
- 1.17. As such, and insofar as it is my evidence that the Appeal Scheme accords with the assessment criteria of Policy DSP40, I conclude that the Appeal Scheme is in conformity with the development plan when taken as a whole.
- 1.18. However, and should the Inspector conclude there is some conflict with any part of policy DSP40, in is my opinion that any such conflict carries considerable but not full weight and is a matter to be weighed in the overall planning balance in the context of the presumption in favour of sustainable development that is triggered in the circumstances given the Council's inability to demonstrate a five year supply of deliverable housing land.
- 1.19. My analysis is entirely in accordance with the approach set out by the Inspector in the Newgate Lane North and South Appeals (**CDJ.4**, paragraphs 15, 104, 105, 106 and 110).
- 1.20. As to addressing the reasons for refusal, my evidence addresses reason (a) and I conclude that the Appeal Scheme is acceptable in relation to this reason given the lack of a five year supply of deliverable housing land, the acute affordable housing need in the Borough, the conformity of the Scheme with Policy DSP40, including the Council's acceptance of the landscape impact of the Scheme that can be mitigated in accordance with the provisions of policy DSP40. An important consideration here is the lack of a landscape objection from the Council.

Effects on European Protected Sites (Reason (b))

- 1.21. Reason for refusal (b) relates to effects of the Appeal Scheme upon Brent geese and waders. This matter is addressed in the evidence of Mr Paul Whitby (The Ecology Co-op) where he concludes 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, and as My Whitby explains, the Appeal Scheme will provide enhancements for Brent geese/waders and is a benefit of the proposal.

- 1.22. Given the content of the Updated Environmental Statement (“ES”) (June 2021), including the Shadow Habitat Regulations Assessment (ES Volume 4, Appendix F7) (**CDA**A series), the Inspector can now undertake a favourable Appropriate Assessment of the Scheme, such that paragraph 177 of the NPPF is addressed and would not exclude an assessment of the Appeal Scheme under paragraph 11(d) of the NPPF.

Highways (Reason (c))

- 1.23. Reason (c) relates to displaced parking and highway safety matters.
- 1.24. This reason for refusal is addressed in the evidence prepared by Mr David Wiseman (Stuart Michael Associates), which position is supported by a signed Agreed Statement of Highway Matters with Hampshire County Highways (“HCC”) (signed and dated June 2021). This reiterates that HCC as Highway Authority raise no objections to the Appeal Scheme, with HCC confirming that the site is acceptable in highway safety and sustainability terms subject to the imposition of a properly worded conditions and the appellant entering into a section 106 agreement to secure necessary mitigation measures. In this regard, the requirements at paragraph 9.2 of the Highways SoCG are addressed in the Legal Agreement.
- 1.25. In addition, and as set out in the officer’s report to committee (**CDC.1**), based on the consultation responses received upon the application and the Local Planning Authority’s assessment of the acceptability of the Scheme in this regard, ‘other’ matters, it was not suggested that the scheme should be refused on highway grounds. Rather, this reason for refusal was added by members and for their reasons explained by Mr Wiseman, Fareham Borough Council’s stance in the matter is not supported by the evidence, which matters he has addressed in his Highway evidence.

On-site Biodiversity (Reason (d))

- 1.26. Reason (d) relates to impacts on protected and priority species. This matter is addressed in the evidence of Mr Adam Day (FPCR) where he concludes that all impacts on protected and priority species will be avoided or mitigated. As set out at section 8 of Mr Day’s evidence, the Appeal Scheme can achieve a 10% biodiversity net gain.

Surface Water Drainage (Reason (e))

- 1.27. As set out at paragraph 5.3 of the Planning SoCG, pursuant to further information submitted to the Lead Local Flood Authority (“LLFA”), the LLFA has removed its holding objection (Appendix A to the Planning SoCG refers) and Fareham Borough Council is no longer pursuing this reason for refusal.

The Loss of BMV Agricultural Land (Reason (f))

- 1.28. Reason (f) relates to the loss of best and most versatile agricultural land.
- 1.29. The Site contains Grade 1 and Grade 2 land (The BMV Report submitted with the planning application confirms) 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.
- 1.30. As set out at paragraph 4.10 of the Planning SoCG, it is agreed with the Council that the loss of BMV agricultural land alone would not be sufficient to warrant their refusal of planning permission but remains a matter to be weighed as a harm in the overall planning balance.

Planning Obligations (Reasons (g) to (l))

- 1.31. Reasons (g) to (l) relate to planning obligations, which matters will be secured in a s106 agreement.

Overarching Summary of the Appeal Scheme's Merits

- 1.32. Having regard to the relevant planning policy and material considerations, the acceptability of the Appeal Scheme may be summarised as follows:
- i. 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. In *Suffolk Coastal DC v Hopkins Developments Ltd* [2017] UKSC 37 (CDK.4) 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. Where the adopted housing strategy derives from an assessment of housing need that pre-dated the NPPF.
 - iii. In addition, 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) and footnote 7 of the NPPF, the most important policies (including those relating to settlement boundaries) are to be regarded as out of date.
 - iv. The Council's continued inability to demonstrate a robust five year housing land supply position means policies CS2 and CS6 are out of date, thus triggering 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.

- v. In the circumstances, the weight attributable to conflicts I have identified with Core Strategy Policies CS14 (with the Appeal Site located beyond the defined settlement boundary); and Local Plan Part 2 Policy DSP6 (again the location of the Appeal Site beyond the defined settlement boundary), which place strict controls overdevelopment outside settlement boundaries is reduced insofar as those boundaries reflect out of date housing requirements and the fact that footnote 7 of the NPPF renders them out of date for the purpose of paragraph 11(d).

- vi. It is my position that conformity with Policy DSP40 means the Appeal Scheme is in accordance with the development plan when taken as a whole.

- vii. In terms of conformity with Policy DSP40, the Council's only allege a breach in relation to part (v).

- viii. In addition, and as the most important policies of the Local Plan are out of date (save for the operation of DSP40), the presumption at paragraph 11(d) of the NPPF applies (subject to paragraph 177 of the NPPF) and contrary to my evidence, should the Inspector find some conflict between the Appeal Scheme and the provisions at policy DSP40, whilst this would attract significant weight, it would be a matter to be weighed in the overall planning balance where it would need to be found that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits; which I do not consider to be the case here.

- ix. The Appeal Scheme represents a sustainable form of development and involves the provision of significant benefits, including the creation of suitable habitat for Brent geese and waders. As such, paragraph 177 is not engaged.

- x. 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.

- xi. 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.
- 1.33. Overall, it is my evidence, informed by the expert evidence provided by other witnesses for the appellant, that the Appeal Scheme accords with the five criteria in policy DSP40. Consequently, it accords with the development plan when *taken as a whole*. As such, the Scheme can be determined in accordance with the approach at paragraph 11(c) of the NPPF. However, and if a conflict is identified, the Scheme falls to be determined against paragraph 11(d).

Content

- 1.34. The remainder of my evidence is set out as follows:
1. Description of the Site and its Surroundings
 2. Description of the Appeal Scheme
 3. Development Plan and the Planning Context
 4. Five Year Housing Land Supply
 5. Affordable Housing Need and Supply
 6. Main Issues: Acceptability of the Appeal Scheme
 7. Summary and Conclusion

2.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA

The Appeal Site

- 2.1. The Appeal Site is edged red on the accompanying Site Location Plan No. 16.140.01C and extends to approximately 12.55ha.
- 2.2. The Site is broadly rectangular in shape and is accessed from Romsey Avenue to the north.
- 2.3. As such, the northern boundary to the Site is formed by the rear gardens of properties fronting Romsey Avenue.
- 2.4. 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.
- 2.5. To the south west of the Appeal Site lies the Wicor Recreation Ground.
- 2.6. 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.
- 2.7. 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.
- 2.8. Local Plan Policy DSP14 sets out the approach to the consideration of development on supporting sites for Brent geese and waders.

- 2.9. 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’.
- 2.10. 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.
- 2.11. 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.

Context: Locational Sustainability

- 2.12. As set out in the Transport Assessment (“TA”) accompanying the application, the appeal site is suitably located for future residents to make sustainable travel choices on foot, bicycle and public transport.
- 2.13. The accompanying Highways evidence sets out the sustainable benefits of providing development at the Appeal Site given its proximity to public transport including bus and rail services.
- 2.14. As set out in the Planning SoCG (Paragraph 3 (g) and (l) to the Executive Summary) the Appeal Scheme is sustainably located having regard to accessing local services and facilities.
- 2.15. The locational merits of the site having regard to accessibility to local services and facilities have been agreed between the Appellant, HCC Highways and FBC. In addition, it is the Appellant’s case that the Appeal Scheme will help to support and sustain local services and facilities through increased local expenditure.

¹ However, the Solent Waders and Brent Goose Strategy (SWBGS) identifies the Site as a Primary Support Area, although its ecological function is disputed and which matter is addressed in the evidence prepared by Mr Whitby.

3.0 APPEAL SCHEME DESCRIPTION

- 3.1. 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.
- 3.2. Appearance, landscaping, layout and scale are reserved for subsequent determination.
- 3.3. 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.”

- 3.4. 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. 5611.025C
 - v. Illustrative Masterplan Layout Plan No. 16.140.10V³
- 3.5. Plan 16.140.10V is a ‘new’ Plan and has been prepared to illustrate the function of the land uses shown on Site Plan No. 16.140.28.

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 This plan features at Figure 5.2 in Chapter 5, Volume 2 of the Environmental Statement Update (June 2021)

3.7. Informed by the design approach set out in the Design and Access Statement, the vision is to be achieved through the following design principles:

- (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.
- (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, Traffic and Environmental Management Plan (“CTEMP”) and a Landscape and Ecological Management Plan (“LEMP”).
- 3.17. The CTEMP 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. At the time of submission of the original Planning Application to the Council, the Scheme was accompanied by an Environmental Statement (“ES”), prepared in accordance with the Town and Country Planning (Environmental Impact Assessment (“EIA”)) Regulations 2017.
- 3.19. As set out at paragraph 1.1 of the ES Update (June 2021), the ES Update was submitted to PINS and FBC on 11th June 2021 and replaces the original ES that was prepared for the Application in its entirety.
- 3.20. The Updated ES assesses the cumulative impact of known projects and it also takes account of the third party comments highlighted by the inspector during this CMC having regard to (i) the effect of the proposal on air quality (Volume 4, Appendix A4 refers), (ii) environmental impacts during construction (Volume 2, Chapter 5 refers); and (iii) and the impact of the existing sports facilities on the amenities of future occupants (Volume 2, Chapter 7 and Volume 4, Appendix C).

- 3.21. Technical Notes in relation to air quality (i); and the impact of the existing sports facilities on future occupants of the Appeal Scheme (ii) have been prepared in response to the issues raised and are attached at **SB1** and **SB2**.
- 3.22. Furthermore, and as the Inspectorate 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, a shadow Habitats Regulations Assessment has been undertaken and is included at Volume 4, Appendix F7 to the ES Update.

4.0 THE DEVELOPMENT PLAN AND THE PLANNING CONTEXT

General

- 4.1. This section of my evidence considers the applicable policies from their development plan that are referenced in the decision notice. I then set out the requirements of national policy, supporting guidance and relevant material considerations. The five year housing land supply position is set out in Section 5 below whilst the need and supply of affordable homes is set out in section 6.

Development Plan and Section 38(6)

- 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 my opinion 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. Based upon the council's approach to determining planning applications, the position set out in numerous appeal decisions (**CDJ** series) and in relation to the Planning SoCG prepared for this inquiry (**CDD.1**), it is agreed that the settlement policy boundaries defined through CS2, CS6, CS14 and DSP6 are out of date. Moreover, there is an ongoing and demonstrable shortfall in the Council's five year housing land supply position. In addition, there remains an acute shortage of affordable homes.
- 4.9. Paragraph 15 of the Newgate Lane North and South Appeal Decision (**CDJ.4**) helpfully puts matters into context, stating as follows:

“Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable

to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40. (My emphasis underlined)

- 4.10. Furthermore, and for the reasons I set out, were the inspector to find conflict between the appeal scheme and any part of policy DSP40 noting that the only dispute between the appellant and FBC is in relation to conformity of this scheme with part (v)), I am of the view that allow such conflict would carry significant weight it remains a matter to be weighed in the overall planning balance. And, for the reasons I set out, I conclude that the balance would fall in favour of granting planning permission pursuant to the approach set out at 1(d) of the NPPF.
- 4.11. 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

- 4.12. 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)
- 4.13. 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.
- 4.14. 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.

- 4.15. 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.
- 4.16. 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.
- 4.17. 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).
- 4.18. 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.
- 4.19. The most important policies for determining the Appeal are out of date, including in relation to their spatial application.

Core Strategy

- 4.20. 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.
- 4.21. Insofar as the appeal scheme is submitted in outline, and for the reasons stated, supported by the evidence of the 'other' witnesses for the Appellant, I am of the view that although there is conflict with policies CS6 and CS14, in so

far as the Appeal Site is located beyond the defined settlement boundary, these policies are out of date insofar as the boundaries were drawn to meet an out of date housing requirement. As such, and given the application of DSP 40 the weight attributable to conflicts with these two policies is reduced. In the circumstances, I give only limited weight to this conflict. This includes on the basis that the council cannot meet its current five year housing requirement from land solely within the currently defined several policy boundaries and, in addition, that boundaries are being reviewed through the emerging Local Plan (see below) in order to meet current and future housing needs.

- 4.22. Applicable policies from the Core Strategy are set out below.
- 4.23. For my purposes, the main policies comprise CS2, CS6 and CS14.
- 4.24. The policies in **bold** represent those that the Appellant's evidence contends the scheme accords with. This leaves two policies where there is a *prima facie* conflict (Policies CS14 and CS16).

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

- 4.25. I go on to consider the provisions of these policies below. I first set out the overall context within which any conflict between the appeal scheme and the Core Strategy policies is to be considered.
- 4.26. Save for the conflict I have identified between the appeal scheme and policy CS6 and CS14 (which policies are highlighted in bold), I am of the view that the scheme accords with all other development management considerations of the Core Strategy.

- 4.27. 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.
- 4.28. 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.
- 4.29. 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.
- 4.30. On this basis, I attach little weight to the conflicts with policies CS14 and CS16. This position reflects that set out at paragraph 106 of the Newgate Lane North and South Appeal (**CDJ.4**).
- 4.31. My 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 location⁴.
 6. The loss of a comparatively small area Grade 1 and 2 BMV agricultural land should be afforded no more than limited weight.
 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.
- 4.32. 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).
- 4.33. 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)

- 4.34. The Development Sites and Policies (“DSP”) DPD (Local Plan Part 2) was adopted in June 2015 and allocates sites and land for housing.
- 4.35. It 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 See Transport Addendum Update (SMA) (Oct 2019) (Sections 5, 7 and Appendix K refer)

- 4.36. 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.
- 4.37. Paragraph 47 of the Local Plan Inspector's Report (May 2015) states as follows (my 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.”

- 4.38. 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.
- 4.39. It is material to my assessment of the overall merits of the scheme that the proposal is consistent with the approach to allowing for additional sites beyond the settlement boundaries as set out in Policy DSP40.
- 4.40. I consider the following Local Plan Part 2 policies are considered relevant to this Appeal.
- 4.41. For my purposes, the main policies comprise DSP6, DSP13, DSP14, DAP15 and DSP40.

- 4.42. The policies in **bold** represent those that the Appellant's evidence contends the scheme accords with. This leaves a single policy where there is a *prima facie* conflict (Policy DSP6). For the reasons set out above including paragraph 4.9, I give little weight to this conflict.

DSP2 – Environment Impact

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

- 4.43. I go on to consider the provisions of these policies below. I first set out the overall context within which any conflict between the appeal scheme and the Core Strategy policies is to be considered.
- 4.44. 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).
- 4.45. 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.
- 4.46. 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).
- 4.47. 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.

4.48. The Appeal Scheme is consistent with the approach to allowing for additional sites beyond the settlement boundaries as set out in Policy DSP40.

4.49. 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.”

4.50. 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 7 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. However, and notwithstanding, I continue to give significant weight 2 policy DSP40 which is consistent with the Framework.

4.51. Save for the conflict with DSP6, the Appeal Scheme accords with the policy considerations of the Local Plan Part 2.

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

4.52. 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

4.53. The conclusions I draw from the above are as follows:

1. The Core Strategy is out of date in relation to the housing requirement set out in Policy CS2 (and the associated settlement boundaries at CS14).
2. The restrictive approach to development set out in local plan Part 2 policy DSP 6 are also out of date.
3. in circumstances where policy DSP 40 is triggered, the weight attributable to conflicts with those more restrictive policies of the development plan would be reduced and would be outweighed by compliance with local plan Part 2 policy DSP 40.
4. I am of the view not in a scenario where a scheme accords with the provisions or policy DSP 40 it is in conformity with the local plan when taken as a whole.
5. Contrary to the stance I adopt, and in the event the Inspector were to conclude that there was some conflict between the Appeal Scheme and element(s) of DSP40 (noting the Council’s position that it accepts the Scheme satisfies parts (i) to (iv) of the policy) this conflict would attach significant weight in the overall planning balance. However, and in that scenario, the balance will be undertaken pursuant to paragraph 11 D of the NPPF such that the presumption would be engaged. In that scenario, and for the reasons I have set out, I am of the view that the balance would fall in favour of granting planning permission.

4.54. 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, I consider that the Scheme accords with the development plan when taken as a whole.

Material Considerations

4.55. The 'other' material considerations relevant to the determination of the Appeal for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 include the following:

- i. The National Planning Policy Context:
 - NPPF and NPPG
 - DCLG Announcements
 - Laying the Foundations: A Housing Strategy for England
 - The Housing White Paper: Fixing our Broken Housing Market
 - Planning and the Broken Housing Market, Committee of Public Accounts, House of Commons (June 2019)
 - Reaffirmation of the Government support for affordable housing in press release of 6th July 2020
 - Planning White Paper (Aug 2020)
- ii. Case Law
- iii. Appeal Decisions in Fareham (relevant to the assessment of housing land supply and conformity of policies with the NPPF)
- iv. My assessment of the five-year housing land supply position as compared with the Council's claimed Five-Year Housing Land Supply Position (section 5 refers)
- v. The Need and Supply of Affordable Housing (section 6 refers)
- vi. The Solent Recreational Mitigation Strategy (SRMS) (Dec 2017)
- vii. The emerging Fareham Local Plan

4.56. A summary of the relevant considerations is set out below.

National Planning Policy Framework

4.57. 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.

4.58. 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

4.59. Paragraph 8 of the NPPF identifies that there are three dimensions to sustainable development, comprising (i) economic, (ii) social; and (iii) environmental.

Economic Role

4.60. 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.

4.61. 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

4.62. 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

4.63. 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

- 4.64. 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).
- 4.65. 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.
- 4.66. 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.
- 4.67. 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.
- 4.68. 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.
- 4.69. 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

- 4.70. Paragraph 59 sets out the Government's objective of significantly boosting the supply of homes.
- 4.71. 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.
- 4.72. 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.
- 4.73. 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.
- 4.74. 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).
- 4.75. This Appeal Scheme for 225 dwellings would make a notable contribution towards the shortfall in supply.

Promoting Sustainable Transport

- 4.76. Section 9 sets out the approach to providing for sustainable growth.
- 4.77. 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’.

4.78. 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

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

4.80. 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 CTEMP 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.

4.81. 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.

DCLG Announcements

4.82. The NPPF should also be read in the context of a number of DCLG and Ministerial Statements which have emphasised the importance on the timely delivery of housing development. These announcements are of some vintage, demonstrating the emphasis placed upon the need to significantly boost the supply of homes. They include, but are not limited to, ‘Laying the Foundations: A Housing Strategy for England’ (Nov 2011); the Ministerial Statement ‘Planning for Growth’ (March 2011); and the Ministerial Statement ‘Housing and Growth’ (6 September 2012) with the latter confirming that the need for new homes is

‘acute’, that supply remains constrained and that a proactive approach was required to support growth.

4.83. Government announcements have repeatedly confirmed the need to increase the supply of housing.

4.84. As far back as 2013 the Government referred to the existence of a nationally identified housing crisis⁵. This further supports the need to significantly increase the supply of housing.

4.85. The message relating to the need to boost the supply of housing and the associated economic benefits that arise have been carried forward in the more recent Statement produced in July 2015 by HM Treasury “Fixing the Foundations: Creating a More Prosperous Nation.”

4.86. Paragraph 9.1 states in relation to house building as follows:

“The UK has been incapable of building enough homes to keep up with growing demand. This harms productivity and restricts labour market flexibility, and it frustrates the ambitions of thousands of people who would like to own their own home.”

4.87. Paragraph 9.7 adds in relation to the planning system and the need for increased house building:

“There remains more to do. As the London School of Economics (LSE) Growth Commission found, ‘under-supply of housing, especially in high-growth areas of the country has pushed up house prices. The UK has been incapable of building enough homes to keep up with growing demand⁶.’”

4.88. Most recently, The House of Commons Committee of Public Accounts (19th June 2019) (paragraph 1 of summary) concluded:

⁵ In the House of Commons Debate on 24 October 2013, the Planning Minister, Nick Boles, reaffirmed that there is a national housing crisis.

⁶ Investing for Prosperity, London School of Economics Growth Commission, September 2013

“The Department has a highly ambitious target to deliver 300,000 new homes per year by the mid-2020s but does not have detailed projections or plans on how it will achieve this. Meeting the target of 300,000 new homes a year will need a **significant step-up in the level of house building**. Current levels are not promising: the number of new homes has increased every year since 2012–13, with 222,000 new homes in 2017–18, but the average number in the period 2005–06 to 2017–18 was still only 177,000 a year. The Department accepts that it will need to transform the housing market to get more new homes built and says that achieving the target would be “very challenging”. Despite having introduced some projects to help, including encouraging small builders through the small builders guarantee scheme and reforming the planning system, the Department simply does not have the mechanisms in place to achieve the 300,000 target. This is compounded by lack of detailed rationale as to why this target was chosen in the first place. It also lacks year-on-year projections on how it will ramp up house building, only illustrative projections which are not in the public domain. **To make this even more concerning, the target does not align with the Department’s new method for calculating the need for new homes which shows that just 265,000 new homes a year are needed.**”

- 4.89. The Committee of Public Accounts also noted with respect of affordable housing (paragraph 5), that:

The Department acknowledges that it will need to sustain and increase the numbers of affordable housing built to help it achieve the target of 300,000 new homes but cannot say how many and what types of affordable homes are needed. The Department has not detailed its expectations for numbers of these types of homes to be built as part of its 300,000 target for new homes. It is encouraging greater numbers of affordable homes to be built through the Affordable Homes Programme; and its reforms to the planning system aim to deliver more homes in areas of high unaffordability, such as London and the South East. At local level, local authorities detail the numbers of types of affordable housing needed in their local plans including social housing, affordable rent, built to rent, and that provided by Housing Associations. However, these planned numbers can be undermined as developers renegotiate section 106 agreements to provide less affordable housing than originally agreed with local authorities. The Department believes that its reforms to section 106 agreements would help the provision of affordable homes.”

- 4.90. The announcements explain the importance of the need to support the *Government's objective of significantly boosting the supply of homes* (NPPF paragraph 59) which matter is a material consideration in relation to the assessment of housing supply. Within this boosting of the supply of housing is a clear recognition of the importance of providing affordable homes (NPPF paragraph 61) as this will help meet the needs of specific groups (paragraph 59).

Housing White Paper (Aug 2020)

- 4.91. The content of the White Paper is a further material consideration relevant to the assessment and determination of the appeal proposal.
- 4.92. It expands upon certain of the above publications, highlighting the fact that the country does not have enough homes and that the housing market is broken. The introduction identifies the cause as being very simple: the lack of supply. Accordingly, the proposals set out how the Government intends to boost housing supply.
- 4.93. These recent publications and announcements highlight the importance and therefore weight to be given to increasing the supply of housing land.

Appeal Decisions in Fareham

- 4.94. There have been a number of appeals relating to proposals for housing within FBC that have assessed the policy position and their justification for housing beyond the settlement boundaries defined under policy CS14 of the Core Strategy.
- 4.95. The appeals comprise as follows (with the decisions included at **CDJ.1 to CDJ.4 and CDJ.6 to CDJ.8**):
- Navigator (**CDJ.7**)
 - Cranleigh Road (**CDJ.6**)
 - Sawmills (**CDJ.8**)

- Posbrook (**CDJ.2**)
- Old Street, Stubbington (**CDJ.3**)
- Downend Road, Portchester (**CDJ.1**)
- Land at Newgate Lane (North and South) (**CDJ.4**) (paragraphs 15, 104, 105, 106 and 110)

4.96. Common themes from the above appeal decisions include as follows:

1. The decisions have consistently found the council two have been too optimistic and its delivery assumptions in setting out its five year housing land supply position.
2. Policies CS2, CS6, CS14 and DSP6 are out of date both in terms of their spatial application and the council was inability to demonstrate a five year supply of deliverable housing land.
3. In those circumstances, the presumption at paragraph 11 the of the NPPF is engaged.
4. Finally, in circumstances where the Council is unable to demonstrate a five year supply of deliverable housing land, the assessment criteria at policy DSP 40 is triggered and the weight attributable to conflicts with the more restrictive policies of CS14 and DSP6 would be given little weight and would be outweighed by compliance with policy DSP 40.

The Solent Recreational Mitigation Strategy

4.97. The Solent is important for its Wildlife and three Special Protection Areas (SPAs) have been designated to protect wintering birds.

4.98. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6km of the SPA boundaries.

Emerging Local Plan

4.99. Fareham Borough Council is currently working on a replacement Local Plan.

4.100. 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.

- 4.101. 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.
- 4.102. 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.
- 4.103. 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.
- 4.104. 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).
- 4.105. The Council has now published its Local Development Scheme (“LDS”) (June 2021) (**CDF.6**), with consultation on a revised Regulation 19 draft Local Plan in spring/summer 2021. The LDS anticipates submission to the Secretary of State in Autumn 2021. The examination is anticipated end 2021/early 2022, with adoption end 2022/early 2023.

- 4.106. The Regulation 19 Local Plan has been published for consultation until 30 July 2021. However, and as set out at paragraph 4.13 of the Planning SoCG, the emerging Local Plan carries limited weight.
- 4.107. 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.
- 4.108. 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.
- 4.109. In addition to the above, the Appellant will be submitting objections to the Plan, including in relation to the overall approach to housing delivery, the omission of the site as a housing allocation; which process will also consider the same evidence in relation to the Primary Support Area status of the Site in the SWBGS as is presented in evidence for this Appeal.

5. FIVE YEAR HOUSING LAND SUPPLY

General

- 5.1. As set out at paragraph 3 in the Executive Summary to the Planning SoCG (**CDD.1**) and paragraph 2.1 of the Housing Land Supply SoCG (**CDD.2**), it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land, thus triggering the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 5.2. Whilst there is dispute as to the extent of the shortfall, it is agreed on any basis (Appellant or Council), that the current shortfall is significant and, in the circumstances, the weight to be given to the delivery of housing from the Appeal Scheme is also significant. Paragraph 5.3 of the Housing Land Supply SoCG refers.
- 5.3. Paragraph 5.4 of the SoCG expands upon the agreed position noting that in light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.

Recent Assessments of the Council's Five Year Supply Positions

- 5.4. As set out in section 4 above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 5.5. 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.”

- 5.6. The deficit in the Council’s five year housing land supply position has continued to persist.
- 5.7. The Council’s housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 (**CDH.12**) 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.
- 5.8. These figures were considered at the recent Newgate Lane (North and South Appeal) (**CDJ.4**), which I summarise below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
 - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
 - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*

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- d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
 - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
 - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

5.9. The Inspector's conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.

5.10. Whilst the LDS has now been published, with the timetable for the emerging Local Plan set out above, it remains the case that land will continue to be needed beyond the settlement boundaries defined in the Core Strategy to meet needs both current and in the future. In the circumstances, the shortfall in the five year housing land supply position will continue to persist without the granted planning permission on sites beyond identifying settlement boundaries.

The Current Position

5.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG (**CDD.2**). The components of supply relied upon by the Council are set out in **CDH.30**. I assess the position in Document **SB3** attached.

5.12. However, and on my 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.

5.13. Based upon my assessment of site deliverability, I am of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1st Jan 2021 to 31st Dec 2025).**

5.14. I have undertaken a review of the five year housing land supply position, which findings are set out at Document **SB3**. For the reasons set out therein, it is my evidence for this Appeal that the shortfall is much greater than purported to be the case by the Council.

5.15. Table 1 below provides a comparison between the housing land supply position set out in the Council's Published Report to Committee in February 2021 (**CDH.12**), the Council's updated position (same base-date) as set out in the Housing Land Supply SoCG (**CDD.2**) and that which we have derived.

5.16. Table 1 reflects the position for the five year period 1st January 2021 to 31st December 2025.

Table 1 – The Respective Five Year Housing Land Supply Positions

	Council Feb 2021	Council June 2021	My Position obo Appellant
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	-498	-924	-2,634
No. of years supply	4.18yrs	3.57yrs	0.93yrs

5.17. As set out in Table 1, I identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.

5.18. The shortfall I have identified is much greater than the 3.57 year supply figure relied upon by the Council.

- 5.19. However, and as set out in the Housing Land Supply SoCG, and regardless of the position to be adopted by the Appeal Inspector, the shortfall on either analysis is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant.
- 5.20. 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.

6. AFFORDABLE HOUSING NEED AND SUPPLY

Context

- 6.1. The Appeal Scheme proposes the on-site provision of 90 affordable dwellings, thus achieving a policy-compliant 40% affordable housing provision.
- 6.2. As to the local context, the need and supply of affordable housing was addressed in the recent Newgate Lane (North and South) Appeal Decision (CDJ.4), with paragraph 97 stating as follows:

“It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council’s adopted Affordable Housing Strategy (2019) identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-20019, well below the need identified for that period by the Council’s Housing Evidence: Overview Report (2017). 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid’s wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.” (My emphasis underlined)

- 6.3. I support and adopt the above findings, which position is supported by the analysis I have undertaken and set out below.

The National Picture

- 6.4. 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”.

- 6.5. 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).
- 6.6. The provision of affordable housing is a key part of the planning system. A community’s need for affordable housing was first enshrined as a material consideration in PPG3 in 1992 and has continued to play an important role in subsequent national planning policy, including the National Planning Policy Framework (2012, 2018 and 2019 versions).

National Planning Policy Framework (2019)

- 6.7. The National Planning Policy Framework (NPPF) is a material planning consideration. It is important in setting out the role of affordable housing in the planning and decision-making process.
- 6.8. The NPPF sets a strong emphasis on the delivery of sustainable development, including affordable homes, at paragraphs 20 and 61.
- 6.9. Paragraph 59 clearly sets out the Government’s aim to “boost significantly the supply of homes”. To both achieve higher housing supply and address the needs of the whole community, paragraphs 60 and 61 indicate:

60. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, 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.

61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people,

students, people with disabilities, service families, travellers²⁵, people who rent their homes and people wishing to commission or build their own homes²⁶. (My underlining)

6.10. The need for affordable housing and the importance of its provision is emphasised in many Government publications, including:

- Planning and the broken housing market, Committee of Public Accounts, House of Commons (June 2019)
- Reaffirmation of the Government support for affordable housing in press release of 6th July 2020⁷
- Planning White Paper – August 2020

Affordable Housing Delivery and Supply

6.11. 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).

6.12. 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.

6.13. As indicated in Table 2 below (sourced from the Government's Affordable Housing Delivery Statistics⁸), 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.

⁷ <https://www.gov.uk/government/news/jenrick-acts-to-safeguard-affordable-homes-during-pandemic>

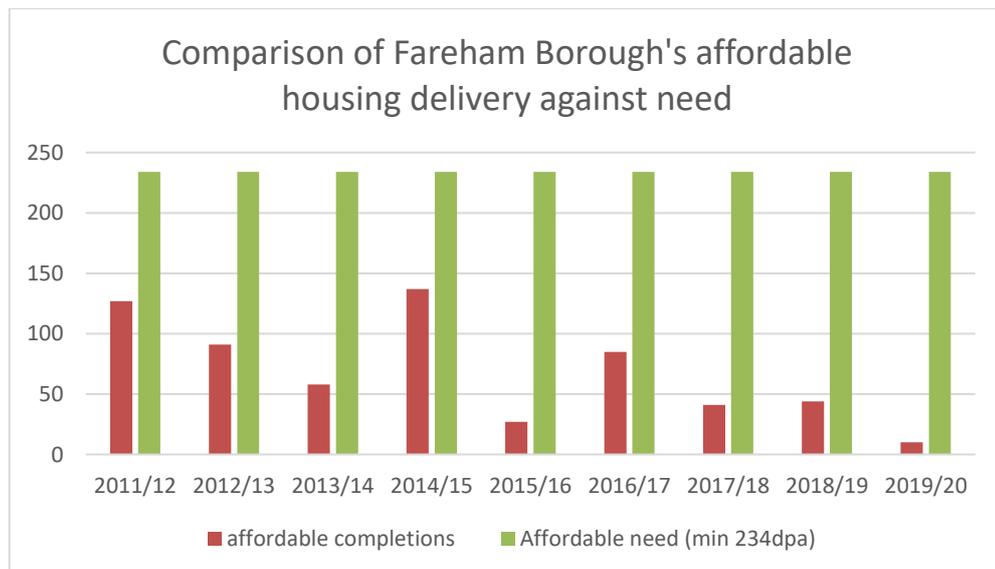
⁸ Live table 1011 - [Live tables on affordable housing supply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/live-tables-on-affordable-housing-supply)

Table 2: Affordable Housing Completions

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

6.14. 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. 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.

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



- 6.16. 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.
- 6.17. The PUSH assessment provides the most recent objectively assessed affordable housing requirements and identifies a need for 234 net affordable dwellings per annum.
- 6.18. In addition to the under-delivery of affordable housing compared to that assessed within the PUSH study, it is also necessary to consider how the Borough’s housing waiting list has also been affected by the under-delivery of affordable homes. This is shown in the table below.

Table 3: Extent of housing waiting list in Fareham Borough⁹

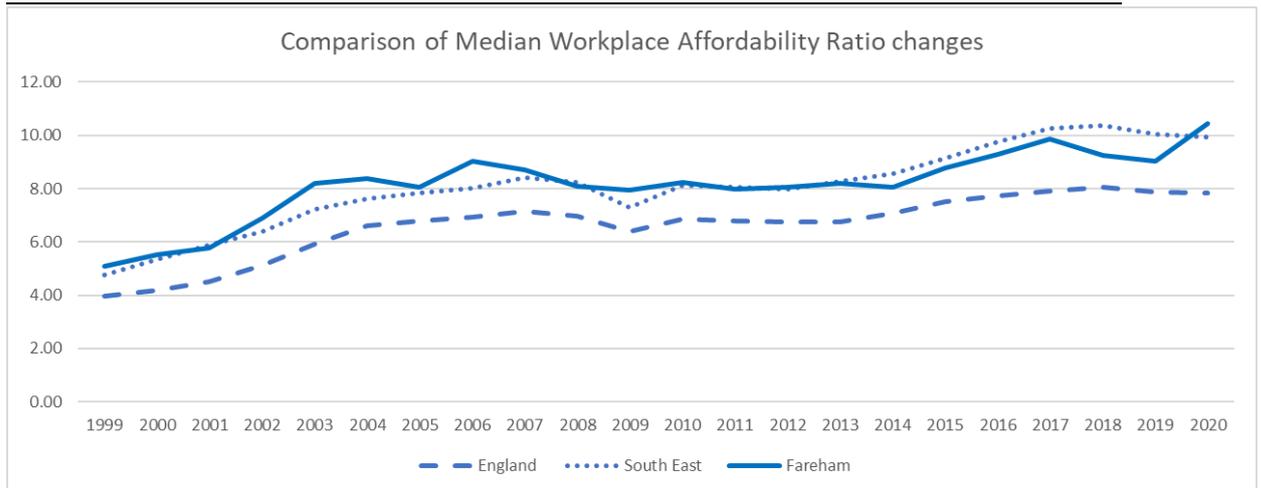
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Households on waiting list	1,225	1,251	1,134	1,040	1,003	1,045	1,082
Households in reasonable preference category	425	351	240	110	275	275	275
Homeless	38	47	40	35	41	84	117

Future Affordable Housing Supply

- 6.19. 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.

⁹ Data from [Local authority housing data - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

- 6.20. 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 Register as indicated in the table above.
- 6.21. 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.
- 6.22. 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 1,486 dwellings or ensure that this does not increase in the future.
- 6.23. 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.
- 6.24. 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 PUSH Study 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.
- 6.25. 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. The under delivery of market housing has contributed to the worsening of the affordability ratios in the Borough as indicated in the chart below.



Affordability Ratios in Fareham Borough

- 6.26. The chart also shows that median workplace-based affordability ratios in Fareham Borough more than doubled between 1999 and 2020 from 5.08 to 10.44, and that they are now above both the those of the South East region and nationally have increased. This more than doubling in the affordability ratio has occurred because of a failure to deliver sufficient homes to meet market and affordable need in the Borough.
- 6.27. The under supply of housing impacts people and communities and is a contributory factor in the unaffordability of housing. The introduction of the affordability ratio to calculate housing need is intended to help with the significant affordability issues across much of the country. The formula applies an increase where the affordability ratio is above 4, or put another way, where the cost of purchasing a home exceeds 4 times annual earnings. A ratio of 4 is therefore deemed to be the level above which unaffordability occurs.
- 6.28. Within the Foreword of the ‘Fixing our Broken Housing Market’ White Paper (Feb 2017), the former Prime Minister made reference to the national average house prices being eight times that of average incomes, representing the highest ever affordability ratio. This reflects people on average incomes seeking an average priced property. The forward added that the broken housing market is one of the greatest barriers to progress in Britain today. It also states that whether buying or renting, the fact is that housing is increasingly

unaffordable – particularly for ordinary working class people who are struggling to get by.

- 6.29. A step change in the delivery of affordable housing is therefore required if the Council is to get anywhere near the local housing need figure and begin to address the imbalance in the local housing market between housing need and supply, including in relation to affordable housing delivery. Such a step change would be consistent with the thrust of paragraph 59 of the NPPF, to boost significantly the supply of homes.

Weight to be Afforded to the Proposed Affordable Housing

- 6.30. The social need for affordable housing is an important material planning consideration and making social progress in tackling such needs is an important element of sustainable development running through the NPPF.
- 6.31. The importance of affordable housing as a material consideration has been reflected in a number of Secretary of State (SoS) and Planning Inspector decisions. A consistent theme is the significant amount of weight which is attached to affordable housing relative to other material planning considerations in the planning balance.
- 6.32. Of particular relevance is the weight to be attached to affordable housing provision even in situations where Councils believe they have a sufficient supply of housing land.
- 6.33. With regard to land off Watery Lane, Curborough, Lichfield, Secretary of State Decision (13th February 2017) (APP/K3415/A/14/2224354), the Secretary of State's decision letter at paragraph 44 confirmed an existence of a five-year housing land supply.
- 6.34. Notwithstanding, the Secretary of State still attached "Very substantial weight" to the benefits of the provision of affordable and market housing (paragraph 53). As part of the planning balance and overall conclusion, the Secretary of State also gave modest weight to the landscape and visual harm from the development, considerable weight to the harm to the setting of heritage assets and considerable weight to the loss of veteran trees and ancient hedgerows

(paragraph 54). Despite this, the Secretary of State at paragraph 55 concluded that the social and economic benefits of providing affordable and market housing were of such importance that they outweighed this environmental harm such that the proposal represented sustainable development.

6.35. This is a clear example of where the provision of housing, including affordable housing, despite the existence of a five-year housing land supply, represented significant benefits and a weighty material consideration that outweighed environmental harms.

6.36. In the Secretary of State's decision in the appeal for 121 dwellings on land north of Dark Lane, Alrewas, he stated (paragraph 49):

“The Secretary of State notes that since the inquiry closed, the Council's affordable housing requirement for the site has increased from 25% to 31%. The Secretary of State agrees with the Inspector for the reasons given (IR12.71) that the need for affordable housing in the district is acknowledged to be acute and, therefore, the affordable housing element of the scheme should carry substantial weight” (My underlining)

6.37. In paragraph 60, he concluded:

“Weighing in favour of the proposal for the reasons given above he attaches substantial weight to the benefits of the provision of affordable housing and also attaches further significant weight to the benefits of market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply.” (My underlining)

6.38. The benefits of affordable housing were also acknowledged by the Inspector in the appeal for up to 180 dwellings on land at Deerlands Road, Wingerworth.

6.39. Paragraph 54 of the decision notes, in relation to the need for and weight to be attributed to the provision of affordable housing:

“In addition, the need for affordable housing is agreed by the parties to be acute and significant. The Council criticised some of the details of the appellant's approach towards consideration of affordable housing at the Inquiry, but it is

clear that there is a very significant need for affordable housing in the District, and that there is very considerable doubt as to delivery. Even if one accepts the Council’s position that there is a pipeline of affordable housing coming forward in Wingerworth - which is far from clear – the provision of 40% affordable housing in the appeal scheme is a benefit. This is a very significant material consideration weighing in favour of the appeal scheme.”

- 6.40. Paragraph 72 states that the **“provision of affordable housing weigh in favour of the appeal”** before paragraph 75 concludes as follows:

“Although I have concluded that there is a five year housing land supply in the District, based on the standard methodology, this is not a ceiling and the provision of general needs housing is a significant material consideration in the light of national policy. In addition the provision of 40% affordable housing is a very significant material consideration weighing in favour of the appeal scheme.”

- 6.41. This acceptance of the benefits of affordable housing is also recognised in the appeal decision relating to a scheme for up to 60 dwellings on land off Satchell Lane, Hamble-le-Rice, Eastleigh. Notwithstanding the Inspector’s conclusion that the Council was able to show a five-year supply of deliverable housing land, paragraph 47 of the decision states in relation to the provision of affordable housing as follows:

“The Council gave evidence as to how the authority has managed to achieve its current housing land supply position and the parties agreed that the Council can demonstrate a five year land supply. The Council’s evidence was that there is a figure of 7.8 years, with the appellant evidencing a 7.2 year supply. Both parties agreed that there is no need to explore the reasons for this slight difference further. At the close of the Inquiry it was suggested by the Council that the figure is around 10 years on the basis of recently released data. However again there is no need to explore this further. Overall, despite the presence of significantly more than a five year supply, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.”

6.42. Paragraph 64 of the decision concludes as follows:

“As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. I appreciate the Council’s point that the economic benefits related to short term construction jobs, and the longer term boost to local spending power, could arise from any similar development. However that does not detract from the fact that this particular development offers these benefits, which I accord significant weight.” (My underlining)

6.43. The Inspector’s decision in the Satchell Lane appeal was reviewed through the Eastleigh Borough Council v Secretary of State judgement ([2019] EWHC 1862 (Admin)) (CDK.17). In paragraph 18, the judge acknowledged:

“Despite the presence of significantly more than a 5YHLS, the provision of market and affordable housing weighed significantly in favour of the proposal in light of the national policy to significantly boost the supply of homes.”

6.44. This was followed (paragraph 20) which the highlighting by the judge that:

“As agreed by the Council, the economic and social benefits of the proposal were worthy of significant weight and, given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight.”

6.45. The above decisions emphasise the great weight which the Secretary of State and Inspectors have, on various occasions, attached to the provision of affordable housing in the consideration of planning applications and appeals. The appropriateness of attributing great weight to the benefits of affordable housing has also been accepted by the Courts.

6.46. Some of the key points that arise from these examples are that:

- i. Affordable housing is an important material consideration;
- ii. Affordable housing can be considered in its own right;

- iii. The importance of unmet need for affordable housing being met; and
 - iv. Even where there is a 5-year housing land supply, material benefits arising from affordable housing can still justify the grant of planning permission despite harm/development plan policy conflicts.
- 6.47. The above sets out my analysis of the affordable housing position in FBC, where I conclude there is a significant need for affordable homes, with the benefits of the delivery of affordable housing from the appeal scheme attracting significant weight in the overall planning balance.
- 6.48. The acute affordable housing need reinforces the merits of the Appeal Scheme with the on-site provision of 90 affordable dwellings.
- 6.49. I attach substantial weight to the benefits associated with the provision of affordable housing from the Appeal Scheme.

7. MAIN ISSUES: ACCEPTABILITY OF THE APPEAL SCHEME

General

- 7.1. This section of my evidence assesses the acceptability of the Appeal Scheme in the context of 38(6) as well as relevant material considerations.
- 7.2. I have carried out my assessment using a series of main issues. I then draw my findings together to undertake the planning balance.
- 7.3. My assessment and planning balance has been informed by the evidence put forward by Mr Wiseman (Highways), Mr Paul Whitby (European Protected Species) and Mr Day (On-site Biodiversity).

Main Issues

- 7.4. I undertake my assessment on the basis of the main issues identified by the Inspector in the CMC Note dated 28 May 2021:
1. Principle of development outside the settlement boundary
 2. The effect of the proposal on European Protected Sites
 3. Other Biodiversity considerations
 4. Parking and Highway safety
 5. Surface water drainage
 6. The loss of BMV agricultural land
 7. The housing land supply position
 8. Conformity with policy DSP40
 9. Third party representations (see paragraph 7.5 below)¹⁰
 10. Planning obligations
 11. Overall planning balance

¹⁰ Comprising (i) the effect of the proposal on air quality, (ii) Environmental impacts during construction; and (iii) the impact of the existing sports facilities on the amenities on future occupants

Interested Party Issues

- 7.5. Separate from the main issues identified by the Inspector, and as discussed at the CMC, further matters raised by third parties include as follows (Page 2 of the Inspector's CMC Note refers):
- iv. Effect of the proposal on air quality
 - v. Environmental impacts during construction
 - vi. The impact of the existing sports facilities on the amenities on future occupants
- 7.6. I address these matters below.
- 7.7. My analysis is set against the context provided by the requirements of Section 38(6), the development plan and material considerations, including the policies of the Framework.
- 7.8. I undertake my analysis in the context of the agreement that the policies for the supply of housing are out of date, including in relation to the lack of a five year supply of deliverable housing land.

Main Issue 1: Principle of Development Outside the Settlement Boundary

- 7.9. As set out at paragraph 3.2 of the Housing Land Supply SoCG, the strategic policies from the Core Strategy (Local Plan Part 1 ("LP1")) and Development Sites DPD (Local Plan Part 2 ("LP2")) are more than five years old, by operation of paragraph 73 and footnote 37 of the NPPF, the housing requirement falls to be measured against the local housing need figure calculated using the standard method ("SM").
- 7.10. The 539dpa figure derived from the SM, to which one applied a 29% buffer (based upon the Housing Delivery Test, results in a 647dpa requirement (rounded). This is considerably in excess of the housing requirement derived from the LP2.

- 7.11. It follows that the LP1 and LP2 policies for the supply of housing (CS2 and CS6) are out of date. (Newgate Lane Appeal, **CDJ.4**, paragraph 104 refers).
- 7.12. Moreover, and in so far as the settlement boundaries as defined in the Core Strategy and Local Plan Part 2 reflect an out of date housing requirement, the weight attributable to the conflicts with Core Strategy Policies CS14 and CS22 as well as Local Plan Part 2 policy DSP6 is reduced.
- 7.13. The lack of a five year supply of deliverable housing land triggers the operation of Policy DSP40, which was introduced into LP2 precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6. The lack of a five year supply of deliverable housing land also triggers the presumption in favour at paragraph 11(d) of the NPPF
- 7.14. As such, and as set out in the Planning SoCG, the most relevant policy for determining the acceptability of the Appeal Scheme is Policy DSP40.
- 7.15. When Policy DSP40 is engaged, it is the conformity of a Scheme to five criteria at parts (i) to (v) of the Policy that determines whether a Scheme is acceptable. In this regard, the weight attributable any conflicts with the more restrictive policies of the development plan would be reduced and compliance with DSP40 means compliance with the development plan overall.
- 7.16. As set out above, the principle of development beyond settlement policy boundaries is established through the wording at Policy DSP40.
- 7.17. As to site specific considerations, which matters I generally assess at Main Matter 8 Below (Conformity with Policy DSP40), 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.
- 7.18. Given the operation of Policy DSP40, 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. As has been agreed with the Council (paragraph 4.10 of the Planning SoCG refers), this is achieved by the Appeal Scheme with landscaping details to be secured by means of an appropriately worded condition.

- 7.19. 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 landscape reason for refusal. This position is reiterated at paragraph 3 in the Executive Summary to the Planning SoCG.
- 7.20. I go on to assess the acceptability of this Appeal Scheme in the context of policy DSP40 at Main Issue 8 below.

Main Issue 2: The Effect of the Proposal on European Protected Sites

- 7.21. This issue is addressed by Mr Whitby and I rely upon his evidence.

The Reason for Refusal

- 7.22. 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"*.
- 7.23. 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"*.
- 7.24. Both of these reasons relate to potential impacts of the development at the Appeal Site on European sites.

Shadow HRA

- 7.25. 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.
- 7.26. In order to assist the Inspector, the Appellant has provided a shadow Habitat Regulations Assessment at Volume 4, Appendix F7 to the Updated ES.
- 7.27. As such, the Inspector will now 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.

Addressing the Impact

- 7.28. As set out in Mr Whitby's evidence, 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.
- 7.29. As Mr Whitby explains, the Appeal Site comprises 12.6ha of arable land and is made up of a single cultivated field that has been managed for spring cereals for the last five years, but is presently sown with spring beans. As he goes on to explain, the Site is not presently, nor has previously been, managed under a stewardship scheme.
- 7.30. LP1 Policy CS4 sets out a hierarchy for the protection of habitats important to the biodiversity of the Borough.
- 7.31. LP2 Policies DSP14 and DSP15 relate to the protection of sites for Brent Geese and/or Waders and for the protection of the Solent Special Protection Area ("SPA").

7.32. The Solent Waders and Brent Goose Strategy (“SWBGS”) 2020 (published March 2021 (**CDE.6**)) was produced by the Solent Waders and Brent Goose Strategy Steering Group. As set out in the Executive Summary to the document, it is a non-statutory document presenting evidence, analysis, and recommendations to inform decisions relating to strategic planning as well as individual development proposals.

7.33. The Executive Summary states that the primary aims of the Strategy are as follows:

- to identify the network of core areas that are regularly used and are of fundamental importance to over-wintering waterfowl across the Solent;
- to maintain a network of sites through better management and protection from development and recreational pressure, and to ensure that they will be resilient to the pressures of climate change and predicted sea level rise in the future;
- to provide a strategy that will ensure that the network of important sites is protected, whilst reducing the current uncertainty over site use, in order to better inform key coastal stakeholders.

7.34. Page 8 states in relation to the environment preferred by Brent Geese and Waders as follows:

“The suitability of sites for brent geese depends on distance from the coast, the size of the grazing area, the type of grassland management, visibility and disturbance. Brent geese prefer large open sites where they have clear sightlines and short, lush grass for grazing. They use a great deal of energy travelling between feeding areas, so tend to preferentially select sites adjacent to the coast. However, brent geese are often seen to fly over some apparently suitable sites to reach others, so there are undoubtedly more subtle factors controlling the desirability of sites.”

7.35. In addition, the SWBGS categorise sites according to their assessed functionality. The categorises are as follows:



- 7.36. The categorisation of sites is based upon a set of results/records gathered by the Hampshire County Council Ecology Team, aided by volunteers.
- 7.37. This information is then used to attribute a value to a site which determines if it is valued as a Candidate Site, Low Use Site, Secondary Support Area, Primary Support Area or a Core Area.
- 7.38. The Appeal Site is identified in the SWBGS as a Primary Support Area (identified as forming part of Parcel F21).
- 7.39. A Primary Support Area is identified as the second most important site by ranking behind a 'Core Area'.
- 7.40. The Strategy requires the loss of such sites to be accompanied by detailed proposals for the provision of an appropriate replacement site.
- 7.41. LP2 Policy DSP14 includes the following assessment:

“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 of ‘importance’.

Development on ‘important’ 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 granted planning permission where:

- i. it can be demonstrated that there is no adverse impact on those sites; or**

ii. appropriate avoidance and/or mitigation measures to address the identified impacts, and a programme for the implementation of these measures, can be secured.”

- 7.42. As Mr Whitby explains, the Appeal Site does not have the characteristics to support its classification in the SWBGS as a Primary Support Area and as such, there would be no adverse impact on the Site by virtue of the Scheme, including on account of the proposed Bird Conservation Area.
- 7.43. As set out at section 7, and paragraph 8.2 of Mr Whitby’s evidence and paragraph 3.74 of the shadow HRA (Volume 4, Appendix F7 to the ES Update (June 2021)), the Appeal Site has been found not to act as supporting habitat for Brent Geese/Waders since 2014.
- 7.44. As set out at section 9 of Mr Whitby’s evidence, reason for refusal (b) appears to have been largely based upon the objection held by Natural England with respect to the perceived adverse impact that would result in the loss of part of a Primary Support Area for brent geese and waders.
- 7.45. Part of the objection raised by Natural England is founded upon the correct principle of implementing the recommendations of the SWBGS, based upon the data provided for parcel F21. At the time of the application and subsequent consultation process, it is unfortunate that consideration of the land management of the site was not considered in assessing the real value of the site, rather than relying solely on historical records. As Mr Whitby explains at his paragraph 9.2, within the original ES produced by Ecosupport in 2018 to support the application, an erroneous data record was made, indicating that two records of 300 brent geese were identified from 2017. It is important to note that this record was an error and also that Natural England in considering this record within the ES had a false perception of the use and indeed the value of the site for brent geese.
- 7.46. Within Mr Whitby’s evidence, and as set out in the ES Update (June 2021), further detail has been provided to show that the Appeal Site (Parcel F21), does not act as supporting habitat to the Solent SPA sites and historically only

appears to have supported brent geese periodically. The principle for assessing the value of a site to support wading birds and brent geese based on its habitat value is supported within the SWBGS and it is clear that the site has not been identified to support any significant numbers of brent geese since the arable management at the site changed to focus on spring cereals.

- 7.47. Mr Whitby further explains that the Bird Mitigation Reserve design as set out by Lindsay Carrington Ecological Services was designed to support at least 300 foraging brent geese.
- 7.48. 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.
- 7.49. 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.
- 7.50. The reserve will cover an area of 4.2 hectares, of which 3.7 hectares 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.

- 7.51. I adopt Mr Whitby’s professional judgment that this reserve far exceeds the requirement to support very low numbers of brent geese, with only a single individual identified since 2013.
- 7.52. Mr Whitby has demonstrated, 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 is included in the Updated ES (June 2021).
- 7.53. 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.
- 7.54. 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.
- 7.55. 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”), with funding in perpetuity to be secured via a s106 agreement.
- 7.56. 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”. However, and even were the Site to be classed as ‘important’ (which it is not), it has been demonstrated through Mr Whitby’s evidence that there would not be any adverse impact arising from the Scheme. In addition,

and as Mr Whitby explains, the Appeal Scheme actually results in a benefit in terms of the habitat to be made available to Solent Waders and Brent Geese.

- 7.57. The other part of the objection raised by Natural England was the likely significant effect of the development upon the Portsmouth Harbour SPA and SSSI, with an Appropriate Assessment recommended.
- 7.58. A Shadow HRA has now been produced that clearly sets out all of the effects and appropriate mitigation and compensation measures required to ensure that there will be no effect on the conservation objectives and the integrity of the Solent SPA sites.
- 7.59. 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).

Emerging Local Plan

- 7.60. As set out at paragraph 4.3 of the Planning SoCG, the emerging Local Plan carries only limited weight. It is in the context that Mr Whitby has assessed the policies of the draft Local Plan in relation to the impact of the Scheme upon European Protected Species. This includes the tests set out at Policies NE1, NE3 and NE5.
- 7.61. The Appeal Site is identified on the Proposals Map to the Regulation 19 draft Local Plan as a Primary Support Area Solent Waders and/or Brent Geese.
- 7.62. Policy NE5 states that Sites which are used by Solent Waders and/or Brent Geese will be protected from adverse impacts commensurate to their status in the hierarchy of the Solent Wader and Brent Geese Network. It is added that development on Core and Primary Support Areas will only be permitted where (a) The proposal has avoided or adequately mitigated impacts on-site; or (b) Where it can be clearly demonstrated that criteria (a) is not feasible or

practicable, a suitable, readily available replacement site which conforms entirely to the specific requirements for the Solent Waders and Brent Geese species concerned and is satisfactorily agreed by the Council and other appropriate bodies is provided and secured for the lifetime of the development.

- 7.63. As Mr Whitby explains, whilst the Appeal Site is used by Brent Geese and Waders to a limited extent, the Site does not function as a Primary Support Area. He also questions the evidence on which the designation is based. Moreover, given the BCA proposals as part of the Scheme that will create habitat to support Brent Geese and Waders, along with the proposed biodiversity net gain associated with the Scheme, it is considered that the Appeal Scheme will be appropriate and will result in the creation of enhanced habitat for European Protected Species.

Summary

- 7.64. 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), DSP14 and DSP40 (Housing Allocations) are also all met.

Main Issue 3: Other Biodiversity Considerations

Reason for Refusal (h)

- 7.65. 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".
- 7.66. 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”).

- 7.67. 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).
- 7.68. 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.
- 7.69. 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 plans or projects, will not adversely affect the integrity of any European site as a result of any recreational disturbance.

Reason for Refusal (d)

- 7.70. 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*”.
- 7.71. As such, reason (d) relates to a lack of information and is not a direct allegation of harm. In so far as further information/clarification is provided on the ecological evidence prepared by Mr Adam Day, it is considered this reason has been satisfied.

7.72. The Council's concerns in relation to on-site ecology are set out at paragraph 8.41 of the Officer's Report (**CDC.1**) which states as follows:

“The Council's Ecologist has raised concerns regarding the lack of information provided by the applicant, including updated information in light of changes to the proposed scheme, in relation to the delivery of the reptile receptor site, impacts on badgers, construction noise and cumulative impacts. In the absence of such information the proposal fails to demonstrate that protected and priority species would be protected and enhanced which is contrary to the aims of Policy DSP13.”

7.73. This analysis identifies three issues comprising (i) delivery of the reptile receptor site, (ii) impacts on badgers; and (iii) construction noise and cumulative impacts.

7.74. All three matters have been addressed in Mr Day's evidence.

7.75. As Mr Day explains, the Site has been the subject of detailed ecological survey work undertaken in 2017, 2018 and in 2021. ES Update Chapter 10 and Appendices F1 and F3-7, provide an update ecological assessment of the Site. As such, sufficient information has been submitted to conclude that protected and priority species will be protected and enhanced, and that there will be a measurable biodiversity net gain.

7.76. Habitats within the Site are predominately of sub local-local ecological value. Three hedgerows and mature trees, which are priority habitats found at the Site, are the most sensitive ecological receptors identified. These will all be retained and protected during the construction and operational period. Given this protection the proposals are in accordance with the requirements Para 175 of the NPPF and policy DSP13.

7.77. In relation to (i) Mr Day explains that the Appeal Site supports a good population of slow worm in boundary habitats including improved grassland, bramble scrub and hedgerows. The majority of these habitats are to be retained, with mitigation for construction impacts will be imbedded in a CTEMP document and

include proposals such as reptile drift fencing to isolate the construction area and habitat manipulation works for removal of any habitat.

- 7.78. Significant enhancements for reptiles are also proposed in a BMEP and will be implemented in the LEMP for the Site. This will likely result in a long term moderate positive impact for reptile species at the Site. Given these benefits, the proposals are again considered to be in accordance with the requirements of national and local planning policies, including DSP13 part ii.
- 7.79. As to (ii), appropriate mitigation to avoid harm on badgers during construction will be implemented through a CTEMP and the sett will be retained within the proposed green infrastructure, which will also provide an enhanced foraging resource for this species.
- 7.80. In relation to (iii), all on-site ecological features of interest, including hedgerows, trees, badgers, bats, breeding birds and reptiles, will be protected, through retention included within the proposals and embedded mitigation and enhancements within the conditioned CTEMP and LEMP documents.
- 7.81. A Framework LEMP and separate Framework CTEMP were submitted on 25 June 2021 and sets out the principles to be addressed by the content of the detailed LEMP, the requirements for which are to be secured by condition and thereafter submitted to and approved in writing by the Council prior to the commencement of development.
- 7.82. 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.
- 7.83. On the basis of the foregoing, it is submitted that Mr Day's evidence and reasoning addresses reason (d) in full, with the Scheme demonstrated to accord with the environmental policies set out in LP1 (CS4 and CS16) and LP2 (Policies DSP13 and DSP40).

Paragraph 177 NPPF

- 7.84. Paragraph 8.64 of the officer's report (**CDC.1**) 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.
- 7.85. I consider 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.
- 7.86. Given the Council did not undertake an AA, it is not in a position to state that paragraph 177 operates against the Appeal Scheme.
- 7.87. Given the content of the Updated Environmental Statement ("ES") (June 2021), including the Shadow Habitat Regulations Assessment (ES Volume 4, Appendix F7), the Inspector can now undertake a favourable Appropriate Assessment of the Scheme, such that paragraph 177 of the NPPF is addressed and would not exclude an assessment of the Appeal Scheme under paragraph 11(d) of the NPPF.
- 7.88. As already noted above, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 presents no constraint to the Appeal Scheme.
- 7.89. The proposed development at the Appeal Site is fully in accordance with the development plan in relation to ecological and environmental matters.
- 7.90. Policy DSP13 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”.*

7.91. 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.

Main Issue 4: Parking and Highway Safety

7.92. This reason for refusal is addressed in the evidence prepared by Mr David Wiseman (Stuart Michael Associates), which position is supported by a signed Agreed Statement of Highway Matters with Hampshire County Highways (“HCC”) (signed and dated June 2021).

7.93. The agreed Highways Statement reiterates that HCC as Highway Authority raise no objections to the Appeal Scheme, with HCC confirming that the site is acceptable in highway safety and sustainability terms subject to the imposition of a properly worded conditions and the Appellant entering into a section 106 agreement to secure necessary mitigation measures. In this regard, the requirements at paragraph 9.2 of the Highways SoCG are addressed in the Legal Agreement.

7.94. In addition to the above, and as set out in the Officer Report to Committee (CDC.1), there was **no objection** from HCC Highways at the time the Council determined the Application. 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)
- Payment of the Travel Plan approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan.

7.95. As I have set out, the Appellant will secure the required mitigation by entering into a section 106 legal agreement.

7.96. As set out in the Agreed Statement of Highway Matters, 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. Moreover, there is no objection comment is also specific in relation to the issue of displaced parking.

1.35. As Mr Wiseman explains, including his section 4, the parking proposals and parking restrictions have the full support of County highways, who recognise this is an improvement to the existing situation and will serve to enhance road safety. Moreover, there will be no displaced car parking on Beaulieu Avenue and he concludes that the Appeal Scheme accords with the highway requirements at policies CS5, CS17 and DP40.

Main Issue 5: Surface Water Drainage

- 7.97. Reason for refusal (e) states that the proposal failed supervised sufficient information to demonstrate the satisfactory disposal of surface water.
- 7.98. 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.
- 7.99. 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.
- 7.100. 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.
- 7.101. 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.
- 7.102. 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.
- 7.103. 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.

7.104. Matters have since moved on and as set out at paragraph 5.3 and Appendix A to the Planning SpCG, pursuant to an exchange of correspondence between the Appellant and LLFA, the LLFA has removed its holding objection and Fareham Borough Council is no longer pursuing reason for refusal (e), subject to the importation of an appropriately worded condition.

Main Issue 6: The loss of BMV Agricultural Land

7.105. Reason (f) relates to the loss of best and most versatile agricultural land.

7.106. The Site contains Grade 1 and Grade 2 land (The BMV Report submitted with the planning application confirms) 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.

7.107. As set out at paragraph 4.10 of the Planning SoCG, it is agreed with the Council that the loss of BMV agricultural land alone would not be sufficient to warrant their refusal of planning permission but remains a matter to be weighed as a harm in the overall planning balance.

Main Issue 7: The Housing Land Supply Position

7.108. 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.

7.109. As set out in section 5 above, the respective housing land supply positions are as follows:

	Fareham Borough Council	Appellant
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

7.110. However, and as set out at sections 2 and 5 of the Housing Land Supply SoCG, the following matters are agreed:

1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1st January 2021 to 31st December 2025.
2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
3. The shortfall will not be rectified other than through speculative applications and the approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.
5. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.
6. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.

7.111. 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.

7.112. 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.

Main Issue 8: Conformity with Policy DSP40

7.113. As set out above, and which matter is also addressed at paragraph 3 of the Executive Summary to the Planning SoCG, in the circumstances, given the lack of a five year supply of deliverable housing land, Policy DSP40 is the operative policy against which the Appeal Scheme falls to be determined.

7.114. It is my case that conformity with Policy DSP40 means the Scheme is in conformity with the development plan when taken as a whole, engaging paragraph 11 (c) of the NPPF. However, and in so far as the Council is not able to demonstrate a five year supply of deliverable housing land, this triggers the presumption in favour of sustainable development at paragraph 11 (d). As such, to the extent the Inspector disagrees with my analysis of the conformity of the Site to Policy DSP40, any conflict would need to significantly and demonstrably outweigh the benefits.

7.115. Policy DSP40 states 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.”**

7.116. As I have explained, and which position is set out in the Planning Statement of Common Ground, it is agreed with the Council that the Appeal Scheme satisfies parts (i) to (iv) of the Policy.

7.117. However, and whilst I say the Appeal Scheme also satisfies Part (v) of the policy, the Council disagree.

7.118. The remainder of this part of my evidence explores the conformity of the Appeal Scheme with Part (v) of the policy; which considerations can be sub-divided into the following components:

- (1) Environmental;
- (2) Amenity; and
- (3) Traffic implications

(1) *Environmental*

7.119. As set out at paragraph 8.68 of **CDC.1**, the Council considers the environmental 'test' at Part (v) is failed for reasons relating to (a) loss of a primary Support Area for which inadequate mitigation has been proposed (resulting in adverse impacts upon the integrity of the EPS), (b) insufficient information has been provided to demonstrate that protected and priority species would be protected, (c) insufficient evidence has been provided to demonstrate that the means of surface water drainage would be acceptable; and (d) loss of BMV agricultural land.

7.120. I have addressed all these concerns in the Main Issues section above.

7.121. Importantly, Mr Whitby's evidence explains the acceptability of the Appeal Scheme in relation to (a) and Mr Day explains the suitability of the Appeal Scheme in relation to (b). The surface water drainage reason for refusal is no longer being pursued, whilst the loss of BMW agricultural land is agreed as not being sufficient to warrant a refusal of planning permission.

(2) Amenity

7.122. In setting out their assessment of the Appeal Scheme (**CDC.1**, paragraph 8.45 refers)), the Council raise no amenity objections to the Scheme.

7.123. As such, the Appeal Scheme satisfies this consideration.

(3) Traffic Implications

7.124. Although **CDC.1** sets out a detailed assessment of the acceptability of the Appeal Scheme in relation to traffic, highway and safety considerations, Members nevertheless resolved to add a highway safety reason for refusal, which matter I have addressed in response to Main Issue 4 above.

7.125. I have addressed this consideration in response to Main Issue 4 above.

7.126. As set out in the Planning SoCG, there agreement that the landscape impact of the Scheme can be mitigated through design.

Summary

7.127. Overall, informed by the evidence of the other witnesses for the Appellant, I conclude there would be no unacceptable impact in environmental, amenity and traffic terms. I therefore conclude that part (v) of Policy DSP40 is satisfied such that the Appeal Scheme accords with the requirements set out in Policy DPS40. As such, including based upon the *Rochdale* and *Corbett* approach set out in section 4 of my evidence, the Appeal Scheme is in accordance with the development plan when it is considered as a whole.

Main Issue 9: Third Party Representations

General

7.128. As set out at paragraph 7.5 above the Inspector identified 3 x issues raised by third parties, comprising as follows:

- (i) Effect of the proposal on air quality
- (ii) Environmental impacts during construction
- (iii) The impact of the existing sports facilities on the amenities on future occupants

7.129. I address each matter below.

- (i) Air Quality

7.130. Air quality is addressed in the Updated Qir Quality Assessment at Volume 4, Appendix A4 of the ES Update (**CDA** series). A summary of the assessment undertaken and conclusions drawn is set out in the Technical Note prepared by Ensafe (**SB1**).

7.131. The air quality assessment concludes that the air quality impacts arising from development of the Appeal Site will not be significant. This assessment is based upon an analysis of existing and future traffic growth which analysis has been undertaken as a worst-case scenario and includes over estimations of pollutant concentrations during the construction and habitation of the development. In addition, the assessment has not factored in any reduction of future year emission factors supported by government policy or likely actions to improve local air quality as set out in the Fareham and Gosport Boroughs' Air Quality Action Plan.

7.132. As such, and even on the worst-case scenario basis, the Appeal Scheme has been demonstrated to be acceptable in relation to air quality considerations and impacts.

(ii) Environmental Impacts During Construction

7.133. The environmental impacts of the Scheme during its construction phase has been assessed at chapter 5 in Volume Two of the ES update (**CDA**A series). In addition, and as set out in the Framework Construction Traffic Environmental Management Plan (CTEMP) (SMA) (June 2021) (**CDA**A.3), the impacts of construction the surrounding environment, including existing residents, can be mitigated through the submission of a detailed CTEMP which will need to accord with the principles established in the Framework CTEMP and secured by condition.

7.134. The Framework CTEMP sets out the overall framework for managing the environmental impact of the development and the movement of construction and delivery traffic to/from the development site. Its main purpose is to ensure that a range of extensive preventative measures are in place to minimise the potential impact of the development on the ecological receptors and local residents, whilst also ensuring the large delivery vehicle movements associated with the development do not create any unnecessary safety concerns.

7.135. Overall, the CTEMP sets out a Clear framework to secure necessary mitigation in relation to environmental impacts during the construction phase.

(iii) The impact of the existing sports facilities on the amenities on future occupants

7.136. This issue relates to the extent to which there may be impacts of the existing football ground upon future occupants of the Appeal Scheme, which matter has been assessed at Volume 2, Chapter 7 and Volume 4, Appendix C of the ES Update (**CDA**A series). A summary of the assessment undertaken and conclusions drawn is set out in the Technical Note prepared by Temple (**SB**2).

7.137. As the data from the noise survey concludes, the predicted daytime noise level at the closet part of the Appeal Site to be developed for housing is below the World Health Organisation guidelines for external amenity areas to avoid moderate annoyance. As such, the operation of the football club during matchdays is not likely to adversely impact the amenity of future residents.

7.138. In addition to the above, the Technical Note predicts that any noise impacts will be insignificant at the Proposed Development and that no noise restrictions will need to be imposed on the operations of the AFC Portchester Football Stadium under its current use.

7.139. Overall, it is concluded the Appeal Scheme will not have an adverse impact upon the operation of the football club and nor will the operation of the football club have an adverse impact upon the amenity of future occupants of the Appeal Scheme.

Main Issue 10: Planning Obligations

7.140. 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

7.141. Once the 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.

Main Issue 11: Overall Planning Balance

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

7.143. 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.

7.144. 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

7.145. 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.

7.146. 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.

7.147. 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 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.
- (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.

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](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/methods/tables/family-spending-workbook-3-expenditure-by-region).

¹⁴ Figures based upon SE Regional data in Table A33

7.148. 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.

7.149. 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”*.

7.150. The economic benefits are to be accorded substantial weight in the planning balance.

Social

7.151. 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.

7.152. 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.

7.153. Overall, the social benefits of the scheme can be afforded substantial weight in the overall planning balance.

Environmental

- 7.154. 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 10% compared with the existing baseline and including the provision of a Bird Conservation Area as enhancements for Brent geese and waders.
- 7.155. 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.
- 7.156. 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.
- 7.157. 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.

Policy Conformity

- 7.158. As I set out above, and based upon the council's inability to demonstrate a five year supply of deliverable housing land, which triggers the operation of Policy DPS40, which was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6, in a scenario where a scheme satisfies all parts of DSP 40, it can't be said to be in conformity with the development plan when taken as a whole (NPPF 11(c)).
- 7.159. For the reasons I have explained, I conclude that the Appeal Scheme does accord with all five parts of policy DSP40 such that planning permission should

be granted for the Appeal Scheme which accords with the developed plan when taken as a whole.

7.160. However, and should the Inspector conclude there is some conflict with any part of policy DSP40, in is my opinion that any such conflict carries considerable but not full weight and is a matter to be weighed in the overall planning balance in the context of the presumption in favour of sustainable development that is triggered in the circumstances given the Council's inability to demonstrate a five year supply of deliverable housing land.

8. SUMMARY AND CONCLUSION

Development Plan Compliance

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.
- 8.6. As confirmed in numerous appeal decisions¹⁵, 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 includes in relation to the housing requirement and settlement boundaries.

¹⁵ CDJ.1 to DJ.4 and CDJ.6 to CDJ.8

- 8.7. 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.
- 8.8. 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.
- 8.9. 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.
- 8.10. 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.
- 8.11. Although the Appeal Site is outside of the settlement boundary, 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.
- 8.12. 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

- 8.13. 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.
- 8.14. The Scheme provides a sustainable location for housing, within walking distance to local serves and facilities.
- 8.15. 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.
- 8.16. 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.
- 8.17. 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 10% net gain for biodiversity compared with the existing baseline.
- 8.18. 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.
- 8.19. 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.

8.20. 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.

8.21. For the reasons set out above, the Appellant will be requesting that the Appeal should be allowed.
