



# **Land to the south of Romsey Avenue, Fareham**

## **Proof of Evidence**

THE TOWN & COUNTRY PLANNING ACT  
1990 (AS AMENDED)

THE TOWN AND COUNTRY PLANNING  
APPEALS (DETERMINATION BY  
INSPECTORS) (INQUIRIES  
PROCEDURE) (ENGLAND) RULES 2000

INSPECTORATE REFERENCE  
APP/A1720/W/21/3271412

LPA REFERENCE P/18/1073/FP

PROOF OF EVIDENCE OF MARK  
SENNITT IN RESPECT OF PLANNING  
MATTERS

**July, 2021**

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## **1. QUALIFICATIONS AND EXPERIENCE**

- 1.1.1. My name is Mark Sennitt and I am a Chartered Town Planner (MRTPI) working with Paris Smith LLP on behalf of Fareham Borough Council (the Council). I have over 30 years' experience across a range of roles within both the public and private sectors. I have previously worked as a Senior Planning Officer for Southampton City Council with extensive professional experience of dealing with large-scale and major projects.
- 1.1.2. I have previously held the position of Planning Director on behalf of Orchard Homes. As such I worked on a wide number of residential projects throughout South Hampshire including issues surrounding housing land supply.
- 1.1.3. Over recent years, I have also gained extensive experience working with the issue of nitrates within the Solent area. This has required me to effectively and directly engage with Local Planning Authorities (LPAs) throughout South Hampshire on a variety of planning applications as well as engaging positively and directly with both the Hampshire and Isle of Wight Wildlife Trust and Natural England. This includes working with relevant landowners on matters relating to appropriate mitigation.
- 1.1.4. I have submitted planning applications to the Council on behalf of clients that have involved development of greenfield sites on the edge of the settlement boundary (where policy DSP40 is relevant) and requiring nitrate mitigation.
- 1.1.5. I am familiar with the Appeal Site and Fareham's relevant extant and emerging planning policy position. I have undertaken two separate site visits to the Appeal Site and the surrounding area on 28 May 2021 and 07 June 2021.
- 1.1.6. I have been instructed by the Council to act on their behalf for this Appeal and can confirm that the evidence provided is true, and in accordance with the guidance expressed by the Royal Town Planning Institute. Any opinions expressed are my own true and professional opinions.

## **2. SCOPE OF EVIDENCE**

- 2.1.1. The scope of evidence provided relates to planning matters and should be read in conjunction with the evidence of Nicholas Sibbett (on ecology issues) and Alec Philpott (on transport issues). The remainder of my evidence is structured as follows:
  - Section 3: Appeal Site and Surrounding Area
  - Section 4: Relevant Planning History
  - Section 5: Appeal Development
  - Section 6: Reasons for Refusal

- Section 7: Relevant Planning Policy and Planning Considerations
- Section 8: Proper Approach to Determining this Appeal
- Section 9: Weight to be Afforded to Adopted Development Plan Policies
- Section 10: 5-Year Housing Land Supply
- Section 11: Affordable Housing Need and Supply
- Section 12: The Local Planning Authority's Case
- Section 13: Benefits of the Appeal Development
- Section 14: Planning Balance
- Section 15: Summary and Conclusions

### **3. APPEAL SITE AND SURROUNDING AREA**

- 3.1.1. The Appeal Site and surrounding area are described in Section 2 of the main Statement of Common Ground (SoCG) and Section 3 of the Council's Statement of Case.

### **4. RELEVANT PLANNING HISTORY**

- 4.1.1. There is no relevant planning history for the Appeal Site. However, to the immediate east of the Appeal Site lies land now in use as public open space in connection with the development of 120 houses on the north side of Cranleigh Road (planning application reference P/15/0260/OA) allowed on appeal in 2017 (Core Document CDJ.6). The Appeal Scheme includes a footpath link to the boundary between the sites which could in principle enable the open space to be integrated with the proposed development, but this is contingent on an arrangement on access with the adjacent landowner which so far as I am aware is not in place and so cannot be relied upon (see paragraph 2.4 of the main SoCG).

### **5. APPEAL DEVELOPMENT**

- 5.1.1. The Appeal Development is for an:

*'Outline Planning Application For Residential Development Of 225 Dwellings, Bird Conservation Area And Area Of Public Open Space With All Matters Reserved Except For Access'*

- 5.1.2. Further detail is given in Section 3 of the Committee Report (Core Document CDC.1), Section 2 of the Council's Statement of Case, and Section 3 of the main SoCG. The plans setting out the Appeal Development are listed in paragraph 3.5 of the main SoCG.

5.1.3. The Application attracted a total of 494 objections from 308 residents (Core Documents CDC.1 and CDC.2), which are summarised in Section 6 of the Committee Report along with the consultation responses. Further objections have been raised as part of the Appeal process.

## **6. REASONS FOR REFUSAL**

### **6.1. Officer Recommendation**

6.1.1. The planning application was subject to an officer recommendation for refusal as detailed in the Committee Report (Core Document CDC.1).

### **6.2. Planning Committee Decision**

6.2.1. The Planning Committee resolved to refuse planning permission at a meeting on 16 September 2020 (Core Document CDC.3) and planning permission was duly refused on 21 September 2020 (Core Document CDC.4). The reasons for refusal were 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.”*

6.2.1. An informative on the decision notice reads as follows:

*“Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points g) - l) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.”*

- 6.2.2. The reasons for refusal were as recommended in the Committee Report, save that Members added reason for refusal (c).
- 6.2.3. Subsequent to the submission of the Appeal the Appellant has provided additional information with regard to concerns over surface drainage (reason for refusal (e)) to the satisfaction of the Council and Hampshire County Council. As such the Council no longer pursue this reason for refusal (see paragraph 5.3 of and Appendix A to the main SoCG).

## **7. RELEVANT PLANNING POLICY AND PLANNING CONSIDERATIONS**

### **7.1. Introduction**

- 7.1.1. The relevant planning policy context and other material considerations are set out in Section 5 of the Council's Statement of Case and summarised in Section 4 of the main SoCG.

### **7.2. The Development Plan**

- 7.2.1. At the local level the statutory development plan comprises the following local development documents:
- Local Plan Part 1 (LPP1): Fareham Borough Core Strategy (adopted August 2011); and
  - Local Plan Part 2 (LPP2): Development Sites and Policies (adopted June 2015).
  - Local Plan Part 3 (LPP3): Welborne Plan (Adopted June 2015).
- 7.2.2. It is common ground that the Welborne Plan is not applicable to the determination of the Appeal, save for its relevance to the assessment of deliverable housing supply from Welborne (SoCG paragraph 4.6).
- 7.2.3. Table 7.1 below outlines the key local plan policies agreed to be relevant to the Appeal (main SoCG paragraphs 4.3 and 4.4).

**Table 7.1 – Summary of relevant local plan policies**

<b>Local Plan Part 1 (LPP1): Fareham Borough Core Strategy</b>	<b>Local Plan Part 2 (LPP2): Development Sites and Policies</b>
CS2: Housing Provision	DSP2: Environmental Impact
CS4: Green Infrastructure, Biodiversity and Geological Conservation	DSP6: New Residential Development Outside of the Defined Urban Settlement
CS5: Transport Strategy and Infrastructure	DSP13: Nature Conservation
CS6: The Development Strategy	DSP14: Supporting Sites for Brent Geese and Waders
CS14: Development Outside Settlements	DSP15: Recreational Disturbance on the Solent Special Protection Areas
CS15: Sustainable Development and Climate Change	DSP40: Housing Allocations
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	

7.2.4. LPP1 is found at Core Document CDE.1 and LPP2 is found at Core Document CDE.2. I therefore do not quote the policies in full in this section, but I hope it is helpful to address certain points.

***LPP1: The Core Strategy***

7.2.5. Policy CS2: Housing Provision makes provision for the supply of 3,729 dwellings in the period 2006 to 2026 from various identified sources of supply (none of which is applicable to the Appeal proposal).

7.2.6. Policy CS4: Green Infrastructure, Biodiversity and Geological Conservation makes provision for, among other things, the protection of important habitats. It emphasises that, where possible, sites will be enhanced. It specifically addresses mitigation of impacts on European sites and states that “Development likely to have an individual or cumulative adverse impact [on European sites] will not be permitted unless the necessary mitigation measures have been secured.”

7.2.7. Part 3 of Policy CS5: Transport Strategy and Infrastructure states that the Council will permit development which, among other things: (a) does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes; and (b) is designed and implemented to prioritise and encourage safe and reliable journeys by walking, cycling and public transport.

7.2.8. Policy CS6: The Development Strategy states that development will be focussed in various specified areas, which do not include the Appeal Site. It goes on to state that, in identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries (which the Appeal Site lies outside of). It states that opportunities will be taken to achieve environmental

enhancement where possible. It also states that development which would have an adverse effect on the integrity of protected European conservation sites which cannot be avoided or adequately mitigated will not be permitted.

- 7.2.9. Policy CS14: Development Outside Settlements states that built development on land outside the defined settlements (such as the Appeal Site) will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. It also makes provision for certain acceptable forms of development outside defined settlements, none of which applies to the Appeal Scheme.
- 7.2.10. Paragraph 5.146 of the supporting text to Policy CS14 explains that the strategy concentrates development into the existing urban areas and strategic sites and that development outside of these areas will be strictly controlled and focus on contributing to the needs of agriculture, farm diversification, countryside recreation, leisure and tourism - needs that would depend on a location outside of the settlement boundary.
- 7.2.11. Policy CS15: Sustainable Development and Climate Change states that the Council will promote and secure sustainable development by directing development to locations with sustainable transport options, access to local services, where there is a minimum negative impact on the environment or opportunities for environmental enhancement. It goes on to state that this will be achieved by various methods including avoiding unacceptable levels of flood risk and proactively managing surface water through the promotion of sustainable drainage techniques.
- 7.2.12. Policy CS16: Natural Resources and Renewable Energy states, in relevant part, that new development will be expected to safeguard the use of natural resources by preventing the loss of the best and most versatile agricultural land (Grades 1, 2 or 3a of the Natural England Agricultural Land Classifications System).
- 7.2.13. Policy CS17: High Quality Design states, in relevant part that all development, buildings and spaces will be safe and easily accessed by all members of the community and that development will be designed to, among other things: (a) respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials; (b) ensure that the public realm has pedestrian priority, is safe, secure, functional and accessible, and is constructed of quality materials and well maintained; and (c) provide appropriate parking for intended uses taking account of the accessibility and context of a development and tackling climate change.

- 7.2.14. Policy CS18: Provision of Affordable Housing states that, on sites that can accommodate 15 or more dwellings, developers will be expected to provide 40% affordable units.
- 7.2.15. Policy CS20: Infrastructure and Development Contributions states that Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider, and that contributions or provision may also be required to mitigate the impact of development upon infrastructure.
- 7.2.16. Policy CS21: Protection and Provision of Open Space states that proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided in accordance with specified requirements.

***LPP2: The Development Sites and Policies Document***

- 7.2.17. Policy DSP2: Environmental Impact states, in relevant part, that development should provide for the satisfactory disposal of surface and wastewater, and should not be detrimental to the management and protection of water resources.
- 7.2.18. Policy DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries states that there will be a presumption against new residential development outside of the defined urban settlement boundaries, subject to certain specified exceptions. It also says that proposals should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts, or detrimental impact on the character or landscape of the surrounding area. This approach is consistent with Policies CS6 and CS14 of the Core Strategy (to which Policy DSP6 cross-refers) to ensure any adverse impacts on the natural environment are minimised and to ensure that landscape character, appearance, form and function of the countryside and coastline within the Borough are protected. The Appeal Site is outside the settlement boundaries and none of the exceptions in Policy DSP6 applies.
- 7.2.19. Policy DSP13: Nature Conservation states that development may be permitted where it can be demonstrated 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. The policy goes on to state the circumstances in which

proposals may be permitted notwithstanding detrimental impacts, though it notes that this does not apply to impacts on SPAs, where stricter tests apply (under the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”).

- 7.2.20. Policy DSP14: Supporting Sites for Brent Geese and Waders sets out an approach for development on “uncertain” or “important” sites for Brent Geese and/or Waders. The Appeal Site is shown as part of an “uncertain” Brent Geese and Wader site in Inset 12 to the LPP2 Policies Maps. As Mr Sibbett notes in his Proof, this reflects the categorisation of the site under the previous 2010 version of the Solent Waders and Brent Goose Strategy. Under the current Strategy (Core Document CDH.6), the Appeal Site is part of a Primary Support Area (F21). As noted in paragraph 8.12 of the Council’s Statement of Case, Policy DSP14 expressly allows for the classification of sites to be updated, and I agree with Mr Sibbett that, as a Primary Support Area (the second highest categorisation under the Strategy), the site is “important” for the purposes and consideration of Policy DSP14. Policy DSP14 prominently sets out that where an adverse impact on the integrity of the SPA cannot be mitigated, planning permission is likely to be refused.
- 7.2.21. Policy DSP15: Recreational Disturbance on the Solent Special Protection Areas (SPA) requires mitigation of recreational impacts of development on the Solent SPAs through, among other approaches, financial contributions.
- 7.2.22. Policy DSP40: Housing Allocations makes express provision, among other things, for circumstances in which, as is currently the case, the Council does not have a five year supply of housing land. In these circumstances, Policy DSP40 states that 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 Gap
  - ‘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’.

7.2.23. Paragraph 5.166 of the supporting text to Policy DSP40 states that:

*“Protecting the character and beauty of the countryside is an important objective and so the careful design of any proposal will be a key consideration. Any proposal must be adjacent to an existing urban area boundary and sensitively designed to ensure it is as well related, and integrated, to the neighbouring settlement as possible. Proposals that minimise the impacts on the countryside and, where relevant, Strategic Gaps will be preferred. Any proposal will also need to demonstrate that there will be no unacceptable environmental, amenity or traffic implications and that all other relevant Policies in the Local Plan have been duly considered.”*

### **7.3. The Emerging Local Plan**

#### **7.4. Introduction**

7.4.1. The Council is in the process of producing a new Local Plan to address the future development requirements of the Borough up until 2037. This emerging Local Plan – once adopted – will replace the current development plan documents which comprise Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).

7.4.2. On 02 October 2020 the Council approved a publication version of its emerging Local Plan (Core Document CDF.4) under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and a six-week period of public consultation took place between 06 November and 18 December 2020. The emerging Local Plan was then revised in the light of changes to the Planning Practice Guidance. On 10 June 2021 the Council approved a revised version of the emerging Local Plan (Core Document CDF.5) for publication under Regulation 19. The consultation opened on 18 June 2021 and is scheduled to run for six weeks until 30 July 2021.

7.4.3. The Council’s current Local Development Scheme (LDS) (Core Document CDF.6) was adopted in June 2021. The LDS indicates that, following the conclusion of the current consultation, the submission of the emerging Local Plan to the Secretary of State for independent examination is scheduled for Autumn 2021 (Regulation 22). Thereafter, the emerging Local Plan is expected to be subject to independent examination in Winter/ Spring 2021/ 2022 (Regulation 24) and adopted in Autumn/ Winter 2022 (Regulation 26).

#### **7.5. Weight to be Attached to the Emerging Local Plan**

7.5.1. Applying the criteria in paragraph 48 of the NPPF, my views on the weight to be attached to the emerging Local Plan are as follows. The Plan is at a relatively

advanced stage of preparation, having undergone multiple consultations and reached Regulation 19 stage. The Council considers its policies to be consistent with the NPPF. However, it has not yet been through independent examination and the extent of objections to its policies is not yet fully known. Although the current Regulation 19 consultation will have closed by the time of the Inquiry, it is unlikely that the Council will have been able to analyse all responses by then. In these circumstances, the Council and Appellant agree that limited weight should currently be attached to the emerging Local Plan (main SOCG paragraph 4.13). However, it is nonetheless material to consider certain aspects and policies.

## **7.6. Treatment of the Appeal Site under the Emerging Local Plan**

- 7.6.1. The Appeal Site was identified and assessed as part of the evidence base for the emerging Local Plan. The site was formally submitted in response to a call-for-sites exercise in 2015 and was included as Housing Site HA5 in the 2017 draft Local Plan (Core Document CDF.1). However, the Appeal Site has not been carried forward as an allocation in either the 2020 publication draft (Core Document CDF.4) or the current publication draft (Core Document CDF.5). It is outside the Urban Area boundary as shown on the Draft Policies Map and therefore in countryside.
- 7.6.2. The current April 2021 version of the Strategic Housing and Employment Land Availability Assessment (SHELAA) (Core Document CDG.11) addresses the Appeal Site as ID207 on page 129. Its constraints are stated to be “Agricultural Land Grade 1 & 2, Minerals (Brick Clay), Countryside, Solent Brent Geese & Wader Primary Support Area, Within 500m of SPA Ramsar & SSSI”. The reason for discounting the Appeal Site as an allocation is stated to be that it is “designated as Brent Geese and Solent Waders Primary Support Site. There is no evidence of a strategy compliant solution”.
- 7.6.3. The current publication draft plan identifies a site near to the Appeal Site as a draft housing allocation: site Moraunt Drive, Portchester (HA12). This site comprises some 1.62 hectares with an estimated yield of 48 units, and lies approximately 420m to the south-east of the Appeal Site. It does not lie within a Primary Support Area. The draft HA12 site allocation is included in the April 2021 SHELAA (ID: 3032 on page 59) (Core Document CDG.11). Consent was granted for an application (ref: P/18/0654/FP) for 48 dwellings on the site on 7<sup>th</sup> May 2021 (and thereafter subject to the completion of further legal agreements on 1<sup>st</sup> June 2021).

## **7.7. Relevant Policies of the Emerging Local Plan**

- 7.7.1. Given the Appeal Site’s location outside the Urban Area boundary, and therefore in the countryside, Policy DS1: Development in the Countryside is applicable. It

provides that proposals for development in the countryside will be supported where, among other things, the proposal is for housing development compliant with one of HP1, HP2, HP4, HP5, HP6 or HP11. It provides that, in addition, proposals will need to demonstrate that they do all of the following: (a) require a location outside of the urban area; (b) conserve and enhance landscapes, sites of biodiversity or geological value and soils; (c) recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap; (d) maintain the character of the undeveloped coast; and (e) are not on Best and Most Versatile agricultural land.

- 7.7.2. Policy H1: Housing Provision makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources (not including the Appeal Site unless it were to come forward as an unexpected windfall development).
- 7.7.3. Policy HP1: New Residential Development states that residential development in locations outside of the Urban Area boundary will be permitted where one of two factors (neither of which apply in this case) applies.
- 7.7.4. Policy HP4: Five-Year Housing Land Supply applies where the Council cannot demonstrate a five-year supply of land for housing and broadly mirrors the wording of LPP2 Policy DSP40.
- 7.7.5. Policy HP5: Provision for Affordable Housing states that states that, on greenfield sites that can accommodate 10 or more dwellings or with an area of 0.5ha or more, developers will be expected to provide 40% affordable units.
- 7.7.6. Policy NE1: Protection of Nature Conservation, Biodiversity and the Local Ecological Network states that development will be permitted where: (a) designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations; (b) protected and priority habitats and species, including breeding and foraging areas are protected and enhanced; and (c) proposals do not prejudice the Ecological Network or result in its fragmentation.
- 7.7.7. Policy NE2: Biodiversity Net Gain states that the development of one or more dwelling or a new commercial/leisure building should provide at least 10% net gain for biodiversity for the lifetime of the development.
- 7.7.8. Policy NE3: Recreational Disturbance on the Solent Special Protection Areas (SPAs) requires mitigation of recreational impacts of development on the Solent SPAs.
- 7.7.9. Policy NE5: Solent Wader and Brent Goose Sites seeks to protect sites used by Solent Waders and/or Brent Geese from adverse impacts commensurate to their

status in the hierarchy of the Solent Wader and Brent Geese Network. The Appeal Site is part of a Primary Support Area shown on the Policies Map.

- 7.7.10. Policy NE10: Protection and Provision of Open Space requires residential development to provide open and play space to meet the needs of new residents.
- 7.7.11. Policy TIN2: Highway Safety and Road Network states that development will be permitted where: (a) there is no unacceptable impact on highway safety, and the residual cumulative impact on the road networks is not severe; and (b) the impacts on the local and strategic highway network arising from the development itself or the cumulative effects of development on the network are mitigated through a sequential approach consisting of measures that would avoid/reduce the need to travel, active travel, public transport, and provision of improvements and enhancements to the local network or contributions towards necessary or relevant off-site transport improvement schemes.
- 7.7.12. Policy TIN4: Infrastructure Delivery requires provision of and contribution towards the delivery of new or improved infrastructure, or other mitigation, to mitigate the impacts of development.
- 7.7.13. Policy D1: High Quality Design and Place Making requires compliance with various key characteristics of high quality design including: Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage (characteristic (i)); Movement - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity (characteristic (iv)); Nature - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure (characteristic (v)); and Resources - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste.
- 7.7.14. Policy D2: Ensuring Good Environmental Conditions states that development proposals will be permitted where they, among other things, do not, individually, or cumulatively, have an unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land, or the wider environment.

## **7.8. National Planning Policy Framework (2019)**

- 7.8.1. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely plan-led (paragraph 15).

- 7.8.2. Paragraph 11 outlines the presumption in favour of sustainable development and how it applies for plan-making and decision-taking.
- 7.8.3. Paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- 7.8.4. Paragraph 48 of the NPPF, which I address above, addresses the weight to be given to policies in emerging local plans.
- 7.8.5. Chapter 5 makes provision for delivering a sufficient supply of homes. Paragraph 59 states that to support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- 7.8.6. Chapter 9 addresses promotion of sustainable transport. Within this, paragraph 108 requires that planning applications for development should ensure, in relevant part that:
- ‘b) safe and suitable access to the site can be achieved for all users; and*
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree’.*
- 7.8.7. Paragraph 109 also states that:
- ‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.*
- 7.8.8. As Mr Philpott notes in his Proof, the Courts have held that if negative impacts on a road network are less than “severe” for the purposes of paragraph 109 of the NPPF, they remain material considerations pointing against the grant of permission to be factored into the overall planning balance: **Redhill Aerodrome Ltd v SSCLG** [2015] P.T.S.R. 274 at [32] (Core Document CDK.13).
- 7.8.9. Paragraph 127(f) of the NPPF, in the context of ‘achieving well-designed places’, requires developments to ensure they create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
- 7.8.10. Paragraph 170 of the NPPF outlines that planning decisions should contribute to and enhance the natural and local environment by, in relevant part:

*'a) protecting and enhancing ... sites of biodiversity ... value ... (in a manner commensurate with their statutory status or identified quality in the development plan);*

*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'; and*

...

*d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures'*

7.8.11. Paragraph 171 of the NPPF requires plans to distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in the NPPF; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

7.8.12. Paragraph 174 of the NPPF sets requirements for plans to protect and enhance biodiversity and geodiversity.

7.8.13. Paragraph 175 of the NPPF, which Mr Sibbett sets out in full in his proof, provides a series of environmental principles to be applied by local planning authorities in determining planning applications.

7.8.14. Paragraph 177 states that:

*'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.*

## **8. PROPER APPROACH TO DETERMINING THIS APPEAL**

### **8.1. Statutory Provisions**

8.1.1. In accordance with sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, this Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The starting point in determining this Appeal is, therefore, the extent to which the Appeal Development accords with, or conflicts with,

the adopted Development Plan policies and the Development Plan as a whole. The Inspector must then turn to other material considerations, which in the case of the Appeal Development include the NPPF and the emerging Development Plan policies.

- 8.1.2. Given the environmental issues in this Appeal, certain other statutory provisions are also relevant, namely: the Habitats Regulations, the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”), the Natural Environment and Rural Communities Act 2006, and the Wildlife and Countryside Act 1981, all of which are addressed in Mr Sibbett’s evidence.

## 8.2. The Priority of the Development Plan

- 8.2.1. The NPPF is an important material consideration under the section 38(6) test. However, as Lord Carnwath made clear in the Supreme Court judgment in **Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council** [2017] UKSC 37 (Core Document CDK.4) (“the Suffolk Coastal case”) at [21], the NPPF:

*‘... cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.’*

- 8.2.2. This is reiterated in NPPF Paragraph 12:

*‘The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making’.*

- 8.2.3. The statutory priority of the Development Plan was also recognised by the Court of Appeal in **Gladman Developments Ltd v SSHCLG** [2021] EWCA Civ 104 (Core Document CDK.20), a case which also addressed the interplay between the section 38(6) test and the tilted balance under paragraph 11(d)(ii) of the NPPF, making clear among other things that a decision-taker may have regard to Development Plan policies when applying the tilted balance.

## 8.3. Housing Land Supply

- 8.3.1. The approach to considering the extent of the housing land supply shortfall is considered in **Hallam Land Management Ltd v SSCLG** [2018] EWCA Civ 1808 (Core Document CDK.8) at paragraphs 51 and 52:

*‘51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker’s planning judgment, and the court*

*will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.'*

*'52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases....the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a shortfall, he will generally have to gauge, at least in broad terms, its extent. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant 'non-housing policies' in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in Hopkins Homes Ltd, in that 'it is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.'*

8.3.2. In this case, as set out in the Statement of Common Ground: Five Year Housing Land Supply ("the 5YHLS SOCG"):

- The Council is unable to demonstrate a five-year supply of housing for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (5YHLS SOCG para 2.2).
- The Council considers the 5YHLS position to be 3.57 years while the Appellant considers it to be 0.93 years (5YHLS SOCG para 4.1 and 4.2).
- Whilst there is a disagreement on the extent of the shortfall it is 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; and as

such (on *Hallam* principles) it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall (5YHLS SOCG para 5.3).

- The presumption in favour of sustainable development as set out in paragraph 11(d) of the NPPF is engaged unless disapplied by virtue of paragraph 177 (5YHLS SOCG para 2.2).

#### **8.4. Is the presumption in favour of sustainable development disapplied by NPPF Paragraph 177?**

8.4.1. As noted above, NPPF Paragraph 177 is clear that the NPPF presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans and projects) unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. NPPF uses the term 'habitats sites' to refer to European sites under the Habitats Regulations.

8.4.2. Unless the Inspector (as competent authority for the purposes of this Appeal) concludes following an Appropriate Assessment that the proposal will (beyond a reasonable scientific doubt, and in combination with other plans and projects) not adversely affect the integrity of any habitats sites, the Appeal must be determined on an un-tilted basis in accordance with the development plan unless material considerations indicate otherwise (the test under Section 38(6) as set out above).

8.4.3. As set out in Mr Sibbett's proof, the Council considers that an adverse effect on the integrity of habitats sites cannot be ruled out beyond a reasonable scientific doubt, such that the tilted balance is disapplied.

#### **8.5. Are there any statutory bars to granting permission?**

8.5.1. If, following an Appropriate Assessment, the Inspector agrees with the Council that an adverse effect on integrity of any habitats sites has not been ruled out beyond a reasonable scientific doubt, the effect of Regulation 63 of the Habitats Regulations is that planning permission could not lawfully be granted unless the tests (the so-called IROPI tests) under Regulation 64 are met.

8.5.2. If the Inspector agrees with the Council that the outstanding surveys mean that there is not full knowledge of the likely significant effects of the Appeal proposal, by virtue of Regulation 3 of the EIA Regulations, planning permission could not lawfully be granted (*R v Cornwall County Council ex parte Jill Hardy* [2001] Env LR 25) (Core Document CDK.12).

**8.6. If the presumption in favour of sustainable development is not disapplied, then how should NPPF Paragraph 11(d) be applied?**

8.6.1. The proper approach to Paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Mr Justice Holgate in *Monkhill Ltd v SSHCLG* [2020] P.T.S.R. 416 at [39] and [45] (upheld on appeal [2021] EWCA Civ 74) (Core Document CDK.10).

8.6.2. As set out in the decision notice and explained below, the proposal does not accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.

8.6.3. NPPF Footnote 7 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where (as here) the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

8.6.4. NPPF Paragraph 11(d) states that for decision-taking, the presumption in favour of sustainable development means as follows:

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

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

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

8.6.5. There are two tests set out as part of paragraph 11 d) of the NPPF. It is the correct approach (see Monkhill), to apply these tests sequentially, the first test being whether there are policies within the Framework which provide a clear reason for refusing the appeal development. If (contrary to the Council's position) the Inspector were to find beyond a reasonable scientific doubt that there were no adverse effects on the integrity of any habitats sites the Council accepts that there would then be no "clear reason" for refusing the Appeal under paragraph 11 d)(i).

8.6.6. In such a scenario, paragraph 11 d)(ii) would then fall to be applied. The Council's position is that the Appeal Development fails the 11 d)(ii) test because the adverse effects of the Appeal Development would significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the NPPF as a whole.

8.6.7. The Council's position is therefore that, both on a tilted and un-tilted basis, the planning balance falls in favour of dismissing the Appeal.

## **9. WEIGHT TO BE AFFORDED TO ADOPTED DEVELOPMENT PLAN POLICIES**

### **9.1. Introduction**

9.1.1. The weight to be afforded to LPP1 and LPP2 policies has been considered in a number of recent appeal decisions. I address the most recent decisions below as these seem to me to be the most relevant (although the Inspector may also wish to consider the older Cranleigh Road, Navigator and Sawmills decisions – Core Documents CDJ.6, CDJ.7 and CDJ.8). I then offer my conclusions.

### **9.2. Recent Appeal Decisions**

#### *Land West of Old Street, Stubbington (January 2019) (Core Document CDJ.3)*

9.2.1. In the case of Land West of Old Street, Stubbington, the Inspector did not determine the precise extent of the shortfall but considered it to be substantial. At paragraph 9, the Inspector noted that the Appellant suggested a housing land supply of 2.5 years, and that the Council's best case was 3.8 years, but she did not think it necessary to determine the precise extent because the deficit was substantial in either case.

9.2.2. At paragraph 10 she noted that this shortfall rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The NPPF recognises the intrinsic beauty of the countryside and, although strategic gaps are not specifically referred to, it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. She concluded at paragraph 11 that:

*"Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing supply shortfall as is the case here. It allows housing to come forward outside of settlements and within strategic gaps, subject to a number of provisions. It seems to me that this policy seeks to complement the aforementioned policies in situations where some development in the countryside is inevitable in order to satisfy an up-to-date assessment of housing need. It assists the decision maker in determining the weight to be attributed to the conflict with restrictive policies such as CS14, CS22 and DSP6 and provides a mechanism for the controlled release of land through a plan-led approach. Policy DSP40 is in accordance with Framework policy and reflects that the LPP2 post-dates the publication of the Framework in 2012. Conflict with it would be a matter of the greatest weight."*

- 9.2.3. The Inspector found that, due to the lack of a five year housing land supply, the conflict with policies CS14 and DSP6 had reduced weight, but policy DSP40 would be breached and this breach meant that the proposal was in conflict with the development plan as a whole (paragraph 39). Notwithstanding substantial benefits of the proposal, planning permission was refused.

Land East of Posbrook Lane (April 2019) (Core Document CDJ.2)

- 9.2.4. In the Posbrook Lane case, the Inspector decided he had no need to conclude on the precise extent of the housing land supply shortfall which he considered to be significant (Paragraph 52). The Inspector determined that, because of the lack of a five-year housing land supply, policies to protect the countryside such as CS14, CS22 and DSP6 did not have full weight, but because they fulfilled a purpose that is consistent with the NPPF they had significant weight (Paragraph 67). However, in respect of Policy DSP40, he concluded at Paragraph 68:

*"...The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight... These are two significant policies [DPS5 and DSP40] where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole."*

Land East of Downend Road, Portchester (November 2019) (Core Document CDJ.1)

- 9.2.5. In the case of Portchester, there was a difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). At paragraph 90, the Inspector errs on the side of caution and considers the Appellant's figure better represents the (then) current situation. However, notwithstanding this fact, he concludes at paragraph 97 that great weight should be attached to the conflict with Policies DSP40 and CS5. In so finding, the Inspector considered the elements of Policies DSP40 and CS5 that applied in that case to be fully consistent with national policy (Paragraph 97).
- 9.2.6. At Paragraph 100, the Inspector concludes that that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits as a whole, which is clearly a decision he has reached having applied the tilted balance set out in NPPF paragraph 11(d)(ii).

Land North and South of Newgate Lane, Fareham (June 2021) (Core Document CDJ.4)

- 9.2.7. In the very recent Newgate Lane decision, the Council considered its housing land supply was 3.4 years, while the appellants considered it was 0.97 years. The Inspector accepted the common ground that the shortfall was material on either basis, and did not consider it necessary to conclude on the precise extent of the shortfall (Paragraph 87), though Inspector Jenkins did find that (on the evidence available) the housing land supply position was likely to be closer to the appellants' estimate than the Council's (Paragraph 91).
- 9.2.8. The Inspector found at Paragraph 15 that, in the absence of a five year supply, the weight to be afforded to Policies CS14, CS22 and DSP6 was reduced because of their restrictive effect, and would be outweighed by compliance with Policy DSP40.
- 9.2.9. At paragraph 54, in the context of highways issues, the Inspector found that:
- “The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.”*
- 9.2.10. At Paragraph 100, the Inspector considered that Policy CS16 was unduly onerous, when considered against the NPPF paragraph 170(b) policy on best and most versatile agricultural land.
- 9.2.11. At paragraph 104, the Inspector found that:
- “... LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements.”*
- 9.2.12. The Inspector went on to give “little weight” to the identified conflicts with policies CS14, CS22 and DSP6 (Paragraph 106).
- 9.2.13. The Inspector then went on to consider policy DSP40. Having found that the Policy was out of date in the absence of a five year housing supply, the Inspector found that it did not follow that the Policy should attract little weight (paragraph 107). The Inspector's reasons were as follows:

*“108. [The] DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.*

*109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.*

*110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area’s defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).*

*111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.*

*112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council’s Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.”*

9.2.14. The Inspector went on to dismiss both appeals.

### 9.3. Conclusions on Weight to be Afforded to Adopted Development Plan Policies

#### Policy DSP40 – Local Plan Part 2: Development Sites and Policies

- 9.3.1. Policy DSP40 expressly addresses the manner in which applications should be decided where a five-year supply cannot be demonstrated – a contingency policy to be applied in circumstances such as this as recognised by Inspector Jenkins above. By complying with its requirements, a proposed residential development outside of the settlement boundary may escape the fundamental constraints of settlement boundary policy.
- 9.3.2. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 59 on ‘significantly boosting the supply of homes’ and with the NPPF as a whole. Policy DSP40 is wholly consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year housing land supply cannot be demonstrated. The policy was examined against the 2012 version of the NPPF and, with modifications which were adopted, found sound by the Local Plan Inspector in his May 2015 report on the LPP2 (Core Document CDE.4). Its NPPF compliance has also been accepted in the Appeal decisions set out above.
- 9.3.3. For those reasons, I consider that Policy DSP40 can be afforded full (or at the very least very substantial) weight in the planning balance and conflict with it should therefore be a matter of the greatest consideration. Failure to do so would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme (to use the words of Lord Carnwath in the **Suffolk Coastal** case set out at paragraph 8.2.1 above) and the NPPF principle that planning for the future should be genuinely plan-led (paragraph 15 of the NPPF).

#### Other Policies

- 9.3.4. As a result of the absence of a five year housing land supply, it is common ground that policies CS2, CS6 and DSP6 are out of date and that the weight to be attributable to conflicts with policies CS14 and CS22 is reduced to the extent they derive from settlement boundaries that reflect out of date housing requirements (main SoCG paragraphs 4.4 and 4.5). However, these policies are consistent with the NPPF and, in line with the Posbrook Lane decision (Core Document CDJ.2) (Paragraph 67) should in my view attract significant weight, rather than the limited weight attributed in the Newgate Lane decision (Core Document CDJ.4) (Paragraph 106).
- 9.3.5. I accept (in line with paragraph 100 of the Newgate Lane decision) that policy CS16 is more onerous than the approach in paragraph 170(b) of the NPPF, but it is nonetheless broadly aligned with the NPPF requirement that the economic and other

benefits of best and most versatile agricultural land should be recognised in decisions, and so should in my view attract significant weight.

9.3.6. The remainder of the relevant policies are in my view consistent with the NPPF and should attract full weight.

## 10. 5-YEAR HOUSING LAND SUPPLY

### 10.1. Introduction

10.1.1. As set out in the 5YHLS SOCG, the parties have reached considerable agreement on five-year housing land supply issues:

- It is agreed that the five-year period to be used for the purpose of calculating the five-year housing land supply position for this Appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (5YHLS SoCG Paragraph 3.1).
- It is agreed that the housing requirement falls to be measured against the local housing need figure calculated using the standard method (5YHLS SoCG Paragraph 3.2).
- It is agreed that the starting point derived from the standard method equates to 2,695 dwellings over the five-year period (or 539 dwellings per annum) (5YHLS SOCG para 3.3) but that this requires a 20% uplift, giving a five-year requirement of 3,234 dwellings (5YHLS SoCG Paragraph 3.30-5).
- It is agreed that the Council is unable to demonstrate a five-year supply of housing for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (5YHLS SOCG para 2.2). The Council considers the 5YHLS position to be 3.57 years while the Appellant considers it to be 0.93 years (5YHLS SOCG Paragraph 4.1 and 4.2).
- Whilst there is a disagreement on the extent of the shortfall, it is 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; and as such (on **Hallam** principles) it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall (5YHLS SoCG Paragraph 5.3).

10.1.2. In light of this agreement between the parties, the Council is content for the Inspector to simply rely on the agreed position and for witnesses not to be called to address five-year housing land supply issues. However, it recognises that it is ultimately a matter for the Inspector's judgement whether she wishes to investigate the five-year housing land supply position in greater detail, and in this Section I therefore provide such detail in case it is required.

## **10.2. The Five-Year Housing Requirement**

- 10.2.1. Planning Practice Guidance (PPG) advice in respect of housing and economic needs assessment states that there is no requirement to specifically address under-delivery separately when determining what the housing requirement should be as the affordability adjustment is applied to take account of this. The only instance where past under-delivery is required to be taken into account is where an alternative approach to the standard method is used (Paragraph:011 Reference ID: 2a-011-20190220).
- 10.2.2. The projected annual household growth should be based on 10 consecutive years, with the current year being used as the starting point from which to calculate growth over that period (PPG Paragraph 004 Reference ID: 2a-004-202001216). The 2014-based household projections use calendar years, not financial, and therefore the household growth has been calculated from 2021-2031 for a base date of January 2021. Paragraphs 427-428 of the Inspector's Report on the Land off Station Road, Long Melford appeal (APP/D3505/W/18/3214377) (Core document CDJ.16) also judged that the starting point should be the current year. In this case the base date for supply is 1<sup>st</sup> January 2021.
- 10.2.3. The base date of 1<sup>st</sup> January 2021 means that the affordability ratios used in determining the housing requirement were appropriate. At that time the 2019 affordability ratios, published in March 2020, were the most recent as per the PPG. However, the Council acknowledges that in April 2021 the affordability ratio of 2020 was adjusted requiring a minimum local housing need of 541 dwellings per annum (dpa).
- 10.2.4. In light of this change in circumstances, the Council has updated its five-year housing land requirement based on the affordability ratio that now applies from 1<sup>st</sup> April 2021. On this basis, the updated housing requirement for the period 1<sup>st</sup> January 2021 - 31<sup>st</sup> December 2025 is 2,695 dwellings, based on a requirement of 508dpa for the 3 months 1<sup>st</sup> January – 31<sup>st</sup> March 2021 and 541dpa for the 4 years and 9 months between 1<sup>st</sup> April 2021 – 31<sup>st</sup> December 2025 – producing the agreed starting point housing requirement of 539dpa (5YHLS SOCG Paragraph 3.3).
- 10.2.5. As a result of the Housing Delivery Test results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement, giving a five-year requirement of 3,234 dwellings for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (5YHLS SOCG para 3.4-5).

### **10.3. Five-Year Deliverable Housing Supply: Key Principles**

- 10.3.1. In order to be considered deliverable (see page 66 of the NPPF) all sites must as a minimum have offered a suitable location for development at the base-date; they must have been available at the base date; and there must have been a realistic prospect of delivery within five-years from the base date of the assessment – this being 1<sup>st</sup> January 2021.
- 10.3.2. Additionally, permitted sites which do not involve major development and sites with detailed planning permission should be considered as deliverable sites unless there is clear evidence that new dwellings will not be delivered within five years.
- 10.3.3. Sites with outline planning permission for major development, sites allocated within the development plan, sites with the grant of planning permission in principle and sites identified on a brownfield register can only be considered deliverable where there is clear evidence that completions will begin on site within five years.

### **10.4. Fareham's Housing Delivery Test Action Plan**

- 10.4.1. The Housing Delivery Test: 2020 measurement was published on the 19<sup>th</sup> January 2021 and confirmed that the Council had achieved 79% of the housing required for the Borough for the three years from 2017-2020. As such the Council has been required to produce an Action Plan in accordance with paragraph 75 of the NPPF and national planning guidance. One of the purposes of such Action Plans is to identify the measures already undertaken and those proposed to be undertaken in order boost the delivery of new housing within Boroughs.
- 10.4.2. The Fareham Borough Council Housing Delivery Test Action Plan was published in May 2021 (Core document CDH.13) and identifies the following measures that have been, or will be, adopted in order to boost the delivery of housing:
- Local Plan - priority will be given to the examination and subsequent adoption of the Local Plan.
  - Welborne Garden Village is regarded as an essential part of the Council's on-going housing delivery programme.
  - Nitrate mitigation sites have been identified and are ensuring that residential sites subject to a resolution to grant planning consent are being approved
  - Nitrate neutrality – lobbying of Government.
  - Development management – in the form of releasing appropriate greenfield sites for development, working with developers in order to bring forward sites through the use of Planning Performance Agreements and, through the use of conditions, by requiring the implementation of consents within a relatively short time period.

- Developer engagement – to include regular updates of the Brownfield Register and regular call for sites.
- Affordable housing programme – the adoption of a new Affordable Housing Strategy and through identification of land owned by the Council.
- Fareham Town Centre Regeneration – the draft Local Plan focusses on the search for additional housing sites in sustainable locations in the Fareham Town Centre.

10.4.3. As a result of these positive actions, it is clear that the supply of housing has increased and that some delivery constraints have been overcome, as I describe in more detail below. As such, the Council considers that its housing land supply position has since considerably improved and is confident that, going forward, ongoing plan-led delivery will further improve the extent that the Council will be able to demonstrate a five-year housing supply position.

#### **10.5. Overview of the Council's Position on the Deliverable Housing Supply**

10.5.1. The most recent and publicly available five-year housing land supply position update was produced by the Council on 17<sup>th</sup> February 2021 (Core document CDH.12 ) and gave a projected position of 4.2 years supply.

10.5.2. However, the Council now considers that it has a 5YHLS of 3.57 years, as set out in Table 10.1 below. The difference from the 17<sup>th</sup> February 2021 position comes from the changed housing requirement (rows A-E) and a decrease in delivery from dwellings with a resolution to grant planning permission that are expected to be built by 31<sup>st</sup> December 2025 (row I):

**Table 10.1 - Fareham Borough – current Housing Land Supply Position**

A	Local Housing Need: Dwellings per annum	539
B	Local Housing Need: Total requirement for 1 <sup>st</sup> January 2021 to 31 <sup>st</sup> December 2025 (A x 5)	2,695
C	20% buffer – delivery of housing over the previous 3 years has fallen below 85% of the requirement, as set out in the 2020 Housing Delivery Test results (B x 20%)	539
<b>D</b>	<b>Total housing requirement for period from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (B + C)</b>	<b>3,234</b>
E	Annual requirement for period from 1 <sup>st</sup> January 2021 to 31 <sup>st</sup> December 2025 (D/5)	647
F	Net outstanding planning permissions for small sites (1-4 units expected to be built by 31 <sup>st</sup> December 2025 (discounted by 10% for lapses)	69
G	Net outstanding <b>full</b> planning permissions for large sites (5 or more units) expected to be built by 31 <sup>st</sup> December 2025	402
H	Net outstanding <b>outline</b> planning permissions for large sites (5 or more units) expected to be built by 31 <sup>st</sup> December 2025	296
I	Dwellings with a resolution to Grant Planning Permission that are expected to be built by 31 <sup>st</sup> December 2025	1132
J	Dwellings allocated in Adopted Local Plan that are expected to be built by 31 <sup>st</sup> December 2025	33
K	Dwellings from brownfield register sites that are expected to be built by 31 <sup>st</sup> December 2025	276
L	Small site windfall allowance (years 4-5) (51dwellings x 2 years)	102
<b>M</b>	<b>Expected housing supply for the period from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025 (F+G+H+I+J+K+L)</b>	<b>2,310</b>
N	Housing Land Supply Position over period from 1 <sup>st</sup> January 2021 to 31 <sup>st</sup> December 2025 (M-D)	-924
O	Housing Supply in Years (M/E)	3.57

## 10.6. Differences Between the Parties on the Deliverable Housing Supply

10.6.1. The differences between the parties on the deliverable housing supply are summarised in Appendix 1 to the 5YHLS SoCG. For convenience, I reproduce the table here (Table 10.2):

**Table 10.2 – Positions of the parties on components of supply**

Supply source	Council	Appellant	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

10.6.2. I address each of the components of supply on which the parties are not agreed below.

## 10.7. Outstanding Outline Planning Permissions - Large (5+ dwellings)

10.7.1. Table 10.3 below provides an update to the status of outline applications (Large 5+ dwellings).

**Table 10.3 – Outstanding Outline Planning Permissions (Large 5+ dwellings)**

Site	Application Reference	Yield	Consent Date	Commentary
HA3 Southampton Road	P/18/0068/OA	105	16/07/2020	Outline consent has been approved for 105 dwellings. A reserved matters application for 95 dwelling is currently being considered (P/20/1584/RM)
Land South of Funtley Road	P/18/0067/OA	55	02/09/2020	Outline consent has been granted with a requirement that a reserved matters application be submitted within 24 months and works to commence within 12 months of a reserved matters application.
Land East of Brook Lane & South of Brookside Drive, Warsash	P/16/1049/OA	85	17/05/2018	A reserved matters application is currently being considered on site. An extension of time has been agreed so as to allow for improvement to the quality of the scheme. The applicants have stated that they anticipate first delivery of the 85 dwellings by 2023/24
Egmont Nurseries	P/18/0592/OA	8	01/10/2020	Outline consent has been granted. A reserved matters application is currently being considered.
18 Titchfield Park Road, Titchfield	P/20/0235/OA	6		S106 agreement is agreed and awaiting signature.
East and West of 79 Greenaway Lane	P/18/0884/FP P/180107/OA	30	11/08/2020 20/01/2021	Outline consent has been granted for 30 dwellings or which 6 dwellings are subject to a full planning consent. The outline consent requires a reserved matters submission within a 12-month period and implementation within 12 months of approval of reserved matters.
246 Botley Road Burrigge	P/18/1413/OA	7	28/01/2021	Reserved matters application was approved 13th July 2021 (P/21/0561/RM).

10.7.2. Table 10.3 above comprises sites with outline consents. The Council has placed conditions on these outline consents that require relatively early submission of Reserved Matters applications. Such conditions are normally placed in the consent with the agreement of the application and are clearly designed to encourage early delivery of housing sites. This approach is clearly working as witnessed by the submission of a number of reserved matters applications. Subsequent reserved matters approvals will then be subject to a condition requiring implementation within a 12-month period. As such these sites are considered deliverable.

## 10.8. Resolutions to grant consent - Large (5+ dwellings) (excluding Welborne)

10.8.1. Table 10.4 below provides an update on applications on large (5+ dwellings) sites with a resolution to grant planning permission.

**Table 10.4 – Resolutions to grant consent for large sites (5+ dwellings) (excluding Welborne)**

Site	Application Reference	Yield	Consent Date	Commentary
Land at Brook Lane, Warsah	P/17/0845/OA	174		The S106 agreement is substantially complete. A reserved matters application will be required to be submitted within a 12-month period and implementation within 12 months thereafter.
Land East of Brook Lane, Warsash	P/17/0752/OA	110	17/02/2021	<i>Outline consent has been granted for 110 dwellings in February 2021 requiring submission of reserved matters within a 12-month period. A reserved matters application for phase 1 comprising 78 dwellings is currently being considered.</i>
Land to the East of Brook Lane and West of Lockwood Road, Warsash	P/17/0998/OA	157		The S106 is nearing completion. Once consent is granted a reserved matters application will be required within an 18-month period and the subsequent implementation period will be 12 months.
Heath Road, Locks Heath	P/17/1366/OA	70		Delays in the issuing of a consent due to an ongoing requirement to undertake ecology surveys, which are anticipated to be completed in August 2021. Once granted a reserved matters application will be required to be submitted within three years of the date of the consent and for works to commence within two years of approval of reserved matters
Land South West of Sovereign Crescent, Locks Heath	P/18/0484/FP	38	8/7/2021	Full planning permission has been granted with a requirement to implement the consent within a 12-month period.
Moraunt Drive, Portchester	P/18/0654/FP	48	7/05/2021	Full planning permission has been granted with a requirement to implement the consent within a 12-month period.
Land adjacent 125 Greenaway Lane	P/19/0402/OA	100	22/04/2021	Outline consent has recently been granted with a requirement that a reserved matters application be submitted within 12 months.
Magistrates Court	P/18/1261/OA	45		It is anticipated that the S106 agreement will be completed in the near future resolving nitrate mitigation issues and a decision notice can be shortly issued.

10.8.2. Table 10.4 above demonstrates that the Council have made efforts to address housing delivery through the granting of permission for residential applications. Thus, four consents have been granted since 17<sup>th</sup> February 2021 that amount to some 296 dwellings. Two of the consents are outline consents that require early submission of a reserved matters application and with reference to Land East of Brook Lane a reserved matters application is currently being considered. Lane South West of Sovereign Crescent and Moraunt Drive both comprise full applications and require implementation within 12 months of approval. An obstacle that has previously impeded the ability of the Council to issue consents, namely the requirement of

residential proposals to demonstrate nitrate neutrality has been overcome (see Section 10.13 below) and it is anticipated that S106 agreements on further sites can be completed soon and consents can be issued. All the applications are subject to conditions requiring submission of reserved matters applications within 12 months and implementation within 12 months of a subsequent approval. These conditions are placed on consents with the agreement of the applicants who have signed up to delivery of these residential sites relatively quickly.

- 10.8.3. The Magistrates Court application (P/18/1261/OA) is still under consideration and I therefore consider it to be a brownfield site, so I would include it within that component rather than the large resolutions to grant component, but this does not affect the total supply.

### **10.9. Welborne Garden Village (WGV)**

- 10.9.1. WGV (Application P/17/0266/OA) comprises a large development to include up to 6,000 dwellings. An initial application was made in March 2017 with a resolution to grant outline consent granted in October 2019. The legal agreement is now at an advanced stage and nearing completion.

- 10.9.2. The constraints that are impeding commencement of works and thus housing delivery have included viability issues and the funding of junction improvements to junction 10 of the M27.

- 10.9.3. Condition 56 of the draft consent requires that no development take place – other than J10 improvements – until the Council approves its funding, as per the following:

*‘No development shall take place other than that related to the delivery of Junction 10 until details of the sources of all the funding necessary to carry out the Junction 10 works has been submitted to and approved by the Local Planning Authority. The development shall be undertaken in accordance with the approved plans.*

*‘Reason: To ensure the timely delivery of the necessary infrastructure to service the development and in interests of highway safety’*

- 10.9.4. The WGV applicants have recently made a number of amendments to the current application. This includes further clarification of the funding of the J10 improvements (as required by condition 56 of the draft consent).

- 10.9.5. The covering letter (8 June 2021) (Core document CDH.14) submitted with the planning application included the following text:

*‘... Following tireless work by Fareham Borough Council, Hampshire County Council, Homes England, The Ministry for Housing, Communities and Local*

*Government and the Buckland team, the funding situation [for M27 J10] is much clearer, and is nearing final agreement. Further funding has been secured in principle (with final agreements programmed for the coming months), and the County Council are nearing a position where they can be confirmed as the delivery body for the improvements (subject to their Cabinet consideration on the 13th July). However, in order to finalise the funding arrangements and to begin to deliver Welborne, there is one final hurdle which necessitates a change to the proposals which have been made before your committee – namely the methodology to deal with potential cost overruns in the construction period.*

*It has been proposed, should cost overruns be identified, Buckland will provide a maximum additional payment of £10m to cover these cost overruns. This additional payment, if required, has an impact on the viability of the scheme. This will necessitate the activation of a mechanism, in which the affordable housing may need to be reduced below 10% to accommodate the additional payment. As the affordable housing has been set at a baseline of 10% to date, it is our understanding that this will necessitate a return to your planning committee to discuss this change.'*

- 10.9.6. The Council have published the revisions to the planning application on its website and entered a further period of consultation which ran until 5 July 2021. It is now intended to refer the application back to the Council's Planning Committee on 23 July 2021 (Core Document CDH.34).
- 10.9.7. The application documents include a revised viability statement (dated June 2021) that seeks to clarify issues with regard to delivery. The statement confirms that relevant parties (to include the applicants, Ministry for Housing Communities and Local Government, Homes England, Department of Transport, Hampshire County Council, the Council and Highways England) have agreed a funding package in respect of the delivery of the J10 improvements.
- 10.9.8. In addition to addressing funding issues in respect of J10 improvements, HCC were confirmed as the delivery body following a cabinet meeting held on 13 July 2021.
- 10.9.9. Recent developments have therefore cleared the way to overcome two obstacles to housing delivery at WGV. Progress on the draft S106 will enable the Council to issue the decision notice in the near future and the applicants have set out how they intend to close the funding gap for the J10 improvements. This will allow the developers to start work on site, to shortly deliver new dwellings and make a contribution to housing land supply. As an outline application, reserved matters applications will

subsequently be required and the viability reports assume that this will enable delivery within a two-year period.

10.9.10. The proposals are therefore compliant with the Planning Practice Guidance on Housing supply and delivery (paragraph 006 Reference ID: 68-006-20190722) which requires further evidence for major sites with residential consent which can include ‘clear relevant information about site viability, ownership constraints or infrastructure provision’.

10.9.11. The 17<sup>th</sup> February 2021 5YHLS position update (Core document CDH.12) includes 30 dwellings in 2022. However, the first completions are now anticipated in 2023/24. The Local Plan trajectory includes 450 homes in the first five years of the plan period, and this figure is included in para 4.8-10 of the Council’s Housing Delivery Test Action Plan published on 8<sup>th</sup> June 2021 (Core document CDH.13). However, the 450 dwellings are projected to be delivered from the 1<sup>st</sup> April 2021 – 31<sup>st</sup> March 2026 and therefore an adjustment has been made on a pro-rata basis to reduce the delivery over the period to 31<sup>st</sup> December 2025 to 390 dwellings (a reduction of 60 dwellings which are assumed to be delivered in the subsequent period 1<sup>st</sup> January 2026 – 31<sup>st</sup> March 2026).

10.9.12. Delivery until 2025/26 is anticipated is shown in the following table:

**Table 10.5 - anticipated housing delivery (2021-2026)**

Period	Units (Expected)
2021-22	-
2022/23	-
2023/24	30
2024/25	180
2025/26	180
<b>Total</b>	<b>390*</b>

\*this includes the reduction of 60 dwellings in year 2025/26

10.9.13. The Housing Delivery Test Action Plan therefore assumes that the first dwellings will be completed in two years (i.e. 2023/24). This is consistent with the CBRE Planning Viability Review with regard to WGV (January 2021) (Core document CDH.31) which on page 7 anticipates revenue income from 2021-22 onwards. The revised viability report (Core document CDH.32) refers to anticipated income in year 2.

10.9.14. The Sir Oliver Letwin Independent Review of Build Out (June 2018) (Core document CDH.15) sought to provide an analysis on, amongst other things, the build out rate of major housing schemes. Chapter 3 refers to ‘Build out rates on large sites’ (i.e. in

excess of 1,000 dwellings) and concludes that the average build out time for a large site is 15.5 years or an average of 6.5% per year. However, it is acknowledged it takes time to gain momentum on larger sites and the report states that it takes some eight years from the developer obtaining an implementable consent to reaching average delivery (i.e. 6.5%). In the meantime, in the first three years of development on a large site, the report anticipates that an average of 9.5% of a site would be delivered (in this instance 570 dwellings).

10.9.15. Table 10.6 below updates the preceding WGV delivery information with average delivery rates for large sites, on the assumption that approval of a reserved matters application will be forthcoming over the next two years thereby ensuring that there is an implementable consent.

**Table 10.6 - Anticipated delivery at WGV accounting for known average delivery on large sites**

Year	Anticipated yield	Letwin Report delivery (%)	Letwin Report dwelling numbers
2021-22	-	-	-
2022/23	-	-	-
2023/24	30	2.3	138
2024/25	180	2.9	174
2025/26	180 *	4.3	258
Total	390	-	570

\*this includes the reduction of 60 dwellings in year 2025/26

10.9.16. Table 10.6 above clearly shows that average housing delivery would – under the Sir Oliver Letwin analysis – be expected to deliver some 570 dwellings in the initial five-year period. Clearly every large site is different and delivery rates will vary. However, it underpins an anticipated delivery rate at WGV as both conservative and realistic.

## **10.10. Brownfield Register Sites**

10.10.1. Table 10.7 below shows the progress of any applications on sites as listed on the Brownfield Register.

Table 10.7 – Summary of progress against Brownfield Register

Site	Application Reference	Yield	Consent date	Commentary
Warsash Maritime Academy	No application	100	-	Whilst no application on has been submitted on site the landowner has exchanged contracts (December 2020) with Metis Homes who have stated that the site is capable of delivering 150 dwellings (which would be in excess of the 100 dwellings that the Council have projected can be delivered over the five year period). A screening opinion (EIA) has been issued for up to 100 dwellings, a 66 bed care home and employment space has been issued by the Council (29th March 2019) confirming that an Environment Statement and Transport Assessment would be required to accompany a major application on site. Metis Homes have made a pre-application submission on site which is currently being considered.
22-27a Stubbington Green	P/18/1410/FP	9	27/05/2021	Full planning permission has recently been granted for 9 dwellings.
Rest of 33 West Street	P/19/1040/OA	10	01/06/2021	Outline consent has been recently granted with a requirement for the implementation within a 3 year period (or within 2 years of a reserved matters application). Consent has been granted for 26 dwellings 10 of which are considered deliverable within the five year period
Locks Heath District Centre	P/21/1048/FP	35	-	A facilitating application (full) to reconfigure the access roads, bus lane and car parking layout so as to allow the future redevelopment of parts of the site is currently being considered. This will enable the subsequent submission of an application for future development
Former Filling Station, Locks Heath Centre	P/21/1048/FP	30	-	A facilitating application (full) to reconfigure the access roads, bus lane and car parking layout so as to allow the future redevelopment of parts of the site is currently being considered. This will enable the subsequent submission of an application for future redevelopment
Assheton Court		27	-	Pre-application discussions have been held regarding the redevelopment of the site to provide a net increase of 27 dwellings. An application is anticipated in 2021.
68 Titchfield Park Road	P/20/1137/FP	9	18/03/2021	Full planning permission has been granted on site. An application to discharge standard conditions is currently being considered
Hammond Industrial Estate	P/20/1597/FP	36	-	A full application is currently being considered for a 36 bed care home. Consent may shortly be granted providing the equivalent of 36 dwellings
Wates House	P/20/1483/PC	20	20/01/2021	Wates House - a prior approval application has been approved on site. A subsequent application for an additional storey to the building to provide an additional 9 dwellings is currently being considered. It is considered that at least 20 dwellings can be provided within the 5 year period.

10.10.2. As noted in paragraph 10.8.3 above, I also consider the Magistrates Court application (P/18/1261/OA) to be a brownfield site, and so I would include it within this component of supply rather than the large resolution to grant component.

10.10.3. It is clear that good progress has been made with regard brownfield sites. Consent has been granted for a number of these sites and that and either facilitating applications or pre-application discussions have been between the Council and the developers. For these reasons I consider that these sites are deliverable.

### 10.11. Local Plan Adopted Housing Allocations

10.11.1. Table 10.8 below provides an update on sites identified in the Local Plan as a housing allocation.

**Table 10.8 – Update on application progress against Local Plan allocations**

Site	Application Reference	Yield	Consent date	Commentary
Wynton Way Fareham	-	13	-	The site is part owned by Hampshire County Council who are looking to acquire the remainder of the site. HCC have agreed to dispose the adjacent Kershaw Centre site which will provide in the region of 19 new affordable homes overall. An application is anticipated in 2021. The Affordable Housing Strategic Lead at the Council advises that recent Fareham housing projects typically see a start date of 12 months of granting consent. Construction would normally take approximately 18 months.
335-357 Gosport Road Fareham	-	-	-	-
33 Lodge Road Locks Heath	-	-	-	-
Land East of Church Road	-	20	-	No application has been received on site. However, the owners have indicated a yield of 26 dwellings with delivery is anticipated in 2022/23. The Council has taken a more precautionary approach and anticipate delivery in 2023/24.

10.11.2. Both Wynton Way and Land East of Church Road are sites that have been subject to discussions with the landowners with respect to their deliverability. They are both allocated in the emerging local plan (Core document CDF.1) as site allocations HA22 and HA29 respectively. They are also both identified in the Strategic Housing Land Availability Assessments (Core documents CDG.5 and CDG.11) with few on-site constraints. The owners of Wynton Way have stated that subject to nitrate mitigation the lead in time for the development is 2-3 years. The Church Road landowners have confirmed that relevant surveys are currently being undertaken. Whilst there are viability issues associated with nitrate mitigation the owners anticipate the submission of a planning application within 12 months. It is therefore considered that both sites are deliverable.

## **10.12. Issues on Deliverability Raised in the Newgate Lane Decision**

10.12.1. In the very recent appeal decisions on Land North and South of Newgate Lane (Core Document CDJ.4) Inspector Jenkins concluded that it was likely that “a shortfall in housing land supply will persist for some significant time to come” (Paragraph 92). In reaching this view Inspector Jenkins had regard to the uncertain situation regarding nitrate mitigation (Paragraph 89), the delivery of housing at Welborne (Paragraph 90) and the likely adoption date of the emerging local plan (Paragraph 92) as it was at the time of the Inquiry being held in February this year. I have provided an update on Welborne in Section 10.9 above. I now turn to the other two issues raised by Inspector Jenkins, both of which (as with Welborne) have progressed significantly.

## **10.13. Nitrate mitigation**

10.13.1. The issue of nitrate mitigation has constrained the ability of the Council to grant planning permission for new dwellings. However, this obstacle has now been resolved and the Council are currently issuing consents upon completion of appropriate legal agreements. Furthermore, it is clear that, moving forward, this issue should not arise again for the foreseeable future.

10.13.2. Nitrate mitigation problems date back to February 2019, when European case law led Natural England to issue advice to relevant local planning authorities recommending that an Appropriate Assessment be undertaken for schemes that result in a net increase of one new dwelling where there is a likely significant impact on European Protected Sites (EPS). The rationale for this premise is that overnight accommodation (to include dwellings) generates nitrates in wastewater that will be discharged into the Solent and thereby harm EPS's. Evidence of algae created by this process can be readily seen at Cams Lake/ Portsmouth Harbour – to the immediate west and south-west of the Appeal Site.

10.13.3. Residential applications are therefore required to demonstrate nitrate mitigation. This has proved to be difficult for some sites, not just within Fareham, but also in numerous adjoining and neighbouring local authorities. Agricultural uses also generate nitrates (through the use, for example of nitrate fertilizer, or through the rearing of livestock) and thus the typical means of mitigation is through the removal of land from agricultural production. This can be carried out through the planting of woodland or creation of wetland habitats – the ‘rewilding’ of these agriculture sites create ‘mitigation sites’.

10.13.4. This solution is space hungry, and typical development sites are simply too small to be able provide adequate space to mitigate their nitrate loads. This has meant that for a period of time, the majority of applications in the system since February 2019

have been unable to demonstrate nitrate neutrality. Until this issue had been resolved such applications were left undetermined. As set out in paragraph 4.12 of the Housing Delivery Test Action Plan (Core document CDH.13) at one point in 2020 some 1,400 dwellings could not be progressed pending resolution of this issue.

10.13.5. However, since September 2020 various mitigation sites have come forward to unlock application sites. The process is therefore one where applicants, during the application process, can make contact with a mitigation site operator. Credits are then purchased on the basis of an agreed nitrate load thereby requiring that the site operator will implement the terms of the overarching contract entered into with the Council – namely to remove relevant land from agricultural use and provide it as, for example, woodland or wetland habitats.

#### **10.14. Mitigation Sites**

10.14.1. There are currently three mitigation sites that applicants can access, as follows:

- Little Duxmore Farm, Rowlands Lane, Havenstreet, Isle of Wight
- Heaton's Farm, Colemans Lane, Porchfield, Isle of Wight
- Warnford Park

10.14.2. Paragraph 5.10 of the Housing Delivery Test Action Plan identifies that agreements are in place with private operators to deliver 4,000 credits, which is sufficient for some 5,000 dwellings. Paragraph 5.12 states that there is an ongoing need to identify and secure future mitigation sites to help secure medium and long term housing supply

10.14.3. All three mitigation sites are located in adjoining local authorities, which therefore means that residential schemes from other local authority areas, can purchase credits to mitigate their own nitrate load. In addition, it is understood that Little Duxmore Farm is at, or nearing, capacity and will soon be unable to make a significant contribution to nitrate mitigation.

10.14.4. In preparing this Proof of Evidence, discussions have been held with the agent acting for the Warnford Park mitigation site, who confirmed the following:

- There are currently available some 3,000kgs of nitrates that can be used to mitigate residential schemes.
- The operators have entered into an overarching agreement with Fareham Borough Council in order to mitigate relevant residential schemes. However, no other meaningful discussions have been held with other, adjoining or neighbouring local authorities. Thus at the present time only sites within the Borough can mitigate nitrate load at Warnford Park.

- 10.14.5. In addition, it has been confirmed by the Council that Heaton's Farm, Colemans Lane currently has some 486 kg of nitrates available for mitigation. However, it is understood that currently one other local authority, other than Fareham Borough Council, has access to this mitigation site.
- 10.14.6. Thus, it is clear that access to some 3,486 kg of nitrate mitigation at Warnford Park and Colemans Lane will be available to residential schemes within Fareham for the short to medium term thereby helping to secure a sufficient and sustainable level of local housing supply.
- 10.14.7. This is in addition to access that applicants may have to other sites that may come forward in the future.
- 10.14.8. The ability of individual sites to mitigate their nitrate load will vary. However, it is common for some sites to be able to demonstrate nitrate neutrality and therefore not be required to access the mitigation sites of Warnford Park or Colemans Lane. WGV, for example is to be nitrate neutral and is expected to deliver 390 dwellings over the next five years. This Appeal Site is another example. These sites will not therefore be required to look for off-site nitrate mitigation.
- 10.14.9. The Habitats Regulations Assessment for the emerging Local Plan estimates (in para 6.6.16) (Core document CDF.7) that the total nitrogen budget for the Plan is 2,182.62 kg/TN/year. This calculation, as set out in Appendix III of this document, is based on an assessment of the nitrate load of both allocated sites and windfall sites. The Appendix also sets out the assumptions made in this assessment and so will vary. However, identified mitigation sites should have sufficient capacity to cater for demands within the Borough for a considerable period of time and well beyond the next five years.

### **10.15. Nitrate Summary**

- 10.15.1. It is clear that the Council has played a demonstrably positive and proactive role in securing nitrate mitigation. This has already had a significant and positive impact on the supply of housing this year enabling the Council to grant planning permission on sites that were otherwise unable to mitigate nitrate load before.
- 10.15.2. It is, therefore, clear that previous issues that the Council have had with regard to issuing consents have now been resolved and that a number of permissions have been granted thus enabling these sites to come forward. Furthermore, adequate nitrate mitigation can be provided for the foreseeable future ensuring that a sufficient level of housing supply can be maintained.

## 10.16. Projected Housing Land Supply within the context of the Emerging Local Plan

10.16.1. The Council has clearly made good progress in addressing ongoing housing land supply issues. Further work is still required and the Council acknowledge that it cannot yet demonstrate a five-year housing land supply position, but are confident that they will be able to do so in the near future in light of the emerging Local Plan and WGV progress.

10.16.2. The Council has published it's Local Development Scheme (June 2021) (Core document CDF.6), which sets out the timetable to adoption of the emerging Local Plan, as per the following:

- Consultation on revised publication local plan (Reg. 19) – Spring/Summer 2021
- Submission to the Secretary of State – Autumn 2021
- Examination – Winter/Spring 2021/2022
- Adoption – Autumn/Winter 2022

10.16.3. The Council is of the opinion that the timetable for the adoption of the Emerging Local Plan is a realistic one. PINS maintain a list of recent local plans by reference to submission and adoption dates. Whilst a number of local plans submitted since 2019 have yet to be adopted there have been a number that have been adopted between 10 months and 1 year 9 months, as per the following table:

**Table 10.9 – Review of timescales of recently adopted local plans (submission to adoption)**

Local Council	Submitted	Adopted	Timescale
Chesterfield Borough Council	28/06/2019	15/07/2020	1 year 1 month
Durham County Council	28/06/2019	21/10/2020	1 year 4 months
Hackney, London Borough of – Local Plan 2033	23/01/2019	22/07/2020	1 year 6 months
London Legacy Development Corporation	08/03/2019	21/07/2020	1 year 4 months
North York Moors National Park	02/07/2019	27/07/2020	1 year
Northumberland National Park	30/09/2019	15/07/2020	10 months
Oxford City Council (2016-36 review)	22/03/2019	08/06/2020	1 year 3 months
South Kesteven District Council	14/01/2019	30/01/2020	1 year
South Oxfordshire District Council	29/03/2019	10/12/2020	1 year 9 months
Suffolk Coastal District Council	29/03/2019	23/09/2020	1 year 6 months
Average			1 year 3 months

10.16.4. In order to be considered sound, Local Plans should be deliverable as well as ambitious. There is also a requirement that the Local Plan should establish a five-

year housing land supply upon adoption. In this regard and taking into account the requirement for a 20% buffer on five-year housing land supply, the specific figures of the stepped housing target proposed are necessary in order to both achieve a five-year housing land supply on adoption of the Local Plan that is realistic and can be sustained going forward. It is important to note that the stepped housing requirement is not expressed as a maximum figure and therefore allows for more dwellings than the target to be delivered per annum. The total requirement and the stepped targets reflect what can be delivered as evidenced in the SHELAA. The trajectory has been informed by regular engagement with developers and landowners and is considered to be reasonable and realistic.

10.16.5. It is correct that this means the minimum housing need of 2,705 homes will be exceeded. However, the Local Plan is required to secure a 5YHLS on adoption and the unmet need contribution and 20% buffer need to be applied. Once you factor in these requirements, the total requirement would actually be 3,588, hence the proposal for the stepped requirement.

#### **10.17. Evidence that Policy DSP40 is effective**

10.17.1. As set out earlier in my evidence, the Council has an express policy permitting development in the countryside if DSP40 is satisfied and has used that policy to grant permissions when appropriate to do so. The very presence of the policy bolstered with the comments of the Inspector who found it sound, demonstrate that the Council is serious about addressing the situation. The Inspectors in the Appeal decisions referred to above appreciated that the Council was serious about addressing the shortfall and this policy was intended to do that – this is why it should be given full weight and any breach of it very significant weight.

10.17.2. Furthermore, through the Plan-making work, the Council has publicly identified potential sites as being appropriate for development, thus encouraging applications to be made. Significant progress has been made in granting permission for major housing sites compliant with policy DSP40 on land at Warsash, Titchfield and Funtley.

10.17.3. In Warsash planning permission has been granted for a total of 255 homes on land outside of the urban settlement boundaries included as a draft housing allocation in the publication local plan (housing allocation HA1 measuring 33.43 ha with an indicative yield of 824 dwellings). A further 431 houses are the subject of favourable resolutions to grant permission meaning once issued very shortly the Council will have permitted 686 homes due to the compliance of these proposed developments with policy DSP40 and in light of the Council's lack of a five year housing land supply. This is a significant contribution towards addressing the shortfall in housing supply brought about due to the efficacy of this policy which is designed for such a scenario.

- 10.17.4. At Titchfield on land to the east of Southampton Road, outline planning permission has been granted for up to 105 homes (reference P/18/0068/OA) following an assessment by Officers of compliance with policy DSP40 and a favourable resolution by the Council's Planning Committee. Officers found no conflict with the constituent parts of policy DSP40, for example due to actual and significant harm to the character and appearance of the area. This site comprises part of a larger draft housing allocation in the publication local plan (HA3 measuring 7.6 ha) estimated to be able to accommodate up to 348 dwellings. It is another example of how development land identified in the publication local plan as a potential site for housing has been brought forward ahead of the plan process due to the permissive ability of policy DSP40.
- 10.17.5. In Funtley, two housing sites have been permitted providing a total of 82 homes (references P/17/1135/OA and P/18/0067/OA) in light of positive recommendations from Officers to the Planning Committee after careful consideration of policy DSP40.
- 10.17.6. The planning permissions granted or soon to be issued at these three 'clusters' alone will deliver a total of 873 dwellings within the countryside as a result of the application of policy DSP40.

## **10.18. Overall conclusion on 5-year housing land supply**

- 10.18.1. For the reasons set out above, although the Council accepts that it is currently unable to demonstrate a 5-year housing land supply and that the shortfall is significant, I consider that the 3.57 year housing land supply figure relied upon by the Council is appropriate and that the housing land supply should continue to improve in the future through plan-led delivery.

## **11. AFFORDABLE HOUSING NEED AND SUPPLY**

### **11.1. Need**

- 11.1.1. It is common ground that there is a significant unmet affordable need within the Borough (main SoCG paragraph 4.12). In this section I consider the extent of that need.
- 11.1.2. The Council's latest document setting out the need for affordable housing in the Borough is 'Fareham's Affordable Housing Strategy 2019-2036' (Core document CDH.33, page 11). It identifies a need for around 3,500 affordable homes in the Borough over the period 2019-2036, equivalent to 206 affordable homes per annum (to include an allowance of 500 for new households and those falling into need).
- 11.1.3. On this basis, the shortfall in the delivery of affordable housing between 2011/12-2018-19 is as set out in the following table:

**Table 11.1 – Affordable Housing Comparison Shortfall**

Period	Cumulative delivery (dpa) *	Shortfall (dwelling units)	
2011/12	206	127	-79
2012/13	412	218	-194
2013/14	618	276	-342
2014/15	824	413	-411
2015/16	1,030	440	-590
2016/17	1,236	525	-711
2017/18	1,442	566	-885
2018/19	1,648	610	-1,038

(\* figures based on MHCLG live tables records)

11.1.4. For the eight-year period between 2011/12 - 2018/19 the overall affordable housing need was 1,648 dwellings (i.e. 8 x 206dpa). Over this period some 610 dwellings were delivered and thus there is a shortfall of 1,038 dwellings (based on MHCLG live tables).

11.1.5. There is no evidence that the shortfall in supply of affordable dwellings has resulted in an increase in affordable housing need within the Borough. The number of households on the Council's waiting list for social and affordable rented housing has not increased in the last few years, but has remained generally constant at around 1,000-1,100 households as per the following table:

**Table 11.2 – Review of Council's waiting list for social and affordable rented housing**

Year	No. on waiting list
June 2018	995
Aug 2019	1,100
Jan 2020	1,082
Jan 2021	1,125

11.1.6. Current indications from Help to Buy South are that the numbers registered for intermediate affordable homes have decreased significantly since 2018/19.

## **11.2. Future Affordable Housing Supply**

11.2.1. The Council has appointed a dedicated post in 2018 to take a strategic lead on progressing affordable housing opportunities within the Borough. Since that date the Council has pushed forward with the delivery of new affordable housing. Typically, projects start on site within 12 months of a full planning consent and thus delivery is expected within five years.

11.2.2. Since the adoption of the Affordable Housing Strategy in 2019 the following affordable housing sites have either been completed or are anticipated to be progressed during 2021/22:

**Table 11.3 – Affordable housing progress since adoption of Affordable Housing Strategy (2019)**

Site and proposal	Application no.	Consent date	Commentary
Former Merjen Engineering, Station Road, Portchester 16 no, Sheltered flats	P/19/0840/FP	17/04/2020	Contractors have been appointed and are due to shortly start on site
Former Hampshire Rose, 18 flats	P/17/0956/FP	25/05/2018	6 flats completed and occupied. Practical completion due May 2021
Land at Stubbington Lane, 11 houses	P/19/0915/FP	15/04/2020	Contractors have been appointed and are due to shortly start on site
123 Bridge Road, Sarisbury Green, 5 houses	P/15/0391/FP	26/05/2015	Completed
Former Scout Hut, Montefiore Drive, 9 flats	P/20/0702/FP	23/11/2020	Architects appointed to undertake the technical design stage and contractor expected to be appointed in 2021
28 Queens Road, Fareham, 2 dwellings	P/20/1513/D3	10/02/2021	Architects shortly to be appointed to undertake the technical design stage and contractor expected to be appointed in 2021

11.2.3. The projects outlined in Table 11.3 above alone comprise 61 affordable dwellings that are anticipated to be completed by the end of 2022.

11.2.4. It is also anticipated that, in future years, progress will be made with regard to the following sites as shown in Table 11.4 below:

**Table 11.4 – Overview of affordable units expected to be delivered**

Site	Commentary
Assheton Court Portchester - Redevelopment of 33 sheltered flats and redevelopment to provide c60 dwellings (net increase of c27 dwellings)	Detailed plans being prepared
15 Crossfell Walk, Fareham (P/21/0361/FP) - Demolition of 2 flats and redevelopment to provide 1 house	Application being considered
Menin House - Redevelopment of 24 dwellings to provide c30-50 dwellings	Awaiting Council Executive approval
Wynton Way. 10 dwellings	Local plan allocation delivery anticipated with five years.

11.2.5. The projects as outlined above are part of an ongoing programme seeking to deliver affordable housing within the Borough. The Council is working with Local Registered Providers who are able to boost the supply of affordable housing. Thus, some schemes are able to be provided as up to 100% affordable housing. Examples of where this is in the process of occurring are North Funtley (P/17/1135/OA), where consent has been granted for 27 dwellings, and land east of Southampton Road, (P/18/0068/OA) for 105 dwellings.

11.2.6. The Council acknowledges that at Welborne the minimum requirement is for 10% of the housing to be affordable up to the first 3000 units. Approximately 3960 units are

likely to be completed within the plan period to 2037. As a best case at this stage, it is therefore likely that c.396 affordable dwellings will be provided over the plan period.

- 11.2.7. A viability review mechanism will be in place, starting from the delivery of 3,000 homes, with a view to enabling additional affordable housing on the site above the minimum 10% requirement subject to meeting certain pre-requirements. The developer has indicated that it remains its target to provide as close to 30% affordable housing as possible across the lifetime of the scheme.
- 11.2.8. Whilst affordable housing provision at Welborne is currently below that originally anticipated by the Council, this must be viewed against an improving position both in respect of a likely reduction in the number of households registered in housing need in the Borough (subject to the outcome of the review of affordable housing needs) and the more proactive role that the Council is now taking to progress affordable housing schemes within the Borough with successful outcomes.

## **12. THE LOCAL PLANNING AUTHORITY'S CASE**

### **12.1. Introduction**

- 12.1.1. In this section, I address each of the reasons for refusal. I then provide an overall planning balance in Section 14 below.
- 12.1.2. Paragraph 8.3 of the Council's Statement of Case refers to the High Court litigation relating to the issue of nutrient neutrality. Judgment has now been given in both cases: *R (Wyatt) v Fareham Borough Council* [2021] EWHC 1434 (Admin) (Core document CDK.18) and *R (Save Warsash and the Western Wards) v Fareham Borough Council* [2021] EWHC 1435 (Admin) (Core document CDK.19). In the light of these judgments, the Council considers that its view that the Appeal proposal would be nitrogen neutral remains reasonable.

### **12.2. Reason for refusal (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.'**

- 12.2.1. The Appeal Development conflicts with LPP1 Policies CS2 and CS6 and LPP2 Policy DSP6 which provide the framework for new housing development and define the appropriate locations for new residential development as being within the settlement boundaries. Development outside of settlement boundaries, such as the Appeal Site, is strictly controlled except for certain circumstances set out in Local Plan Policy CS14, none of which apply to the Appeal Development. LPP2 Policy DSP40 allows for additional residential development in the context of a 5YHLS shortfall subject to various criteria being met. It is common ground that criteria (i) to (iv) are satisfied (main SoCG Paragraph 4.9) but the Council considers that the unacceptable

environmental, amenity and traffic implications mean that criterion (v) has not been satisfied. For the reasons set out in Section 9 above, the breaches of policies CS2, CS6, CS14 and DSP6 are matters to which I attach significant weight and the breach of policy DSP40 is a matter to which I attach the greatest weight.

12.2.2. So far as landscape issues are concerned, the Council does not have a freestanding landscape reason for refusal. As with any rural housing proposal of this scale, a degree of adverse landscape and visual impact will occur, which would be in breach of policies CS14, CS17 and DSP6. However, the Council accepts that landscape and visual impacts have been minimised for the purposes of DSP40 criterion (iii). It is common ground that the residual landscape and visual impacts could be successfully minimised by a positive design response and landscaping strategy at the reserved matters stage (main SoCG Executive Summary paragraph 3(d)). I therefore attach limited weight to the landscape and visual harms.

12.2.3. So far as the emerging Local Plan is concerned, the Appeal Site is within designated countryside outside the urban boundary. The Appeal Development would conflict with Draft Policy DS1 (since it is not compliant with paragraphs (i), (j), (k) and (m)), and Draft Policies H1, HP1 and HP4(e). As noted above, it is common ground that limited weight should currently be attached to the emerging Local Plan (main SOCG paragraph 4.13) and I therefore attach limited weight to the breaches of these policies.

**12.3. Reason for refusal (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.’**

12.3.1. As Mr Sibbett demonstrates in his evidence, the Appellant has not demonstrated beyond reasonable scientific doubt that the development would not have an adverse effect upon the integrity of Portsmouth Harbour SPA (and the associated SSSI and Ramsar) as a result of impacts on Brent Geese and waders. Mitigation of impacts is required, but the mitigation proposed by the Appellant is unsatisfactory in various regards and is not secured. As a result, permission cannot be granted unless the tests under Regulation 64 of the Habitats Regulations are met (which the Appellant has not suggested would be the case). Dismissal of the Appeal would also, as Mr Sibbett notes, be consistent with the Inspector’s duty under Section 28G of the Wildlife and Countryside Act 1981.

12.3.2. Granting permission would also be contrary to LPP1 Policies CS4 and CS6, LPP2 Policies DSP6, DSP13, DSP14 and DSP40(v), the Solent Waders and Brent Goose Strategy and Mitigation Guidance, and NPPF paragraphs 170 and 175. I attach very

substantial weight to these breaches. The Appeal Development would also breach emerging Local Plan policies NE1, NE5, HP4(e) and D2(b) to which I attach limited weight.

**12.4. Reason for refusal (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.’**

12.4.1. As Mr Philpott demonstrates in his evidence, the Appeal Development (through displacement as a result of the extra parking restrictions to be imposed) will cause inconvenience and loss of amenity to residents and other road users. Although Mr Philpott does not consider such impacts to be “severe” for the purposes of NPPF paragraph 109, he considers them to be significant. As Mr Philpott also demonstrates, servicing activities combined with high parking demand and a significant increase in daily traffic arising from the Appeal Development are likely to give rise to conflict and as a result prejudice highway safety.

12.4.2. The Appeal Development therefore does not satisfy LPP1 Policies CS5 (3) and CS17, LPP2 Policy DSP40 (v), and NPPF paragraphs 108(b) and (c), 109 and 127(f). I attach significant weight to these breaches so far as amenity issues are concerned and the greatest weight so far as safety issues are concerned. The Appeal Development would also breach emerging Local Plan Policies HP4(e), TIN2 and D1 (characteristic (iv)), to which I attach limited weight.

**12.5. Reason for refusal (d): ‘The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced’**

12.5.1. As Mr Sibbett demonstrates in his evidence, although some progress has been made in the revised Environmental Statement, the Appeal Proposal still fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced.

12.5.2. As Mr Sibbett explains, the Council considers that outstanding surveys mean that there is not full knowledge of the likely significant effects of the Appeal Proposal, so that by virtue of Regulation 3 of the EIA Regulations, planning permission cannot lawfully be granted (*R v Cornwall County Council ex parte Jill Hardy* [2001] Env LR 25) (Core Document CDK.12). There is also a difficulty regarding the conservation of a badgers sett and issues regarding reptiles.

12.5.3. As a result of these issues, permitting the proposal on current information would breach the EIA Regulations, LPP2 Policies DSP6, DSP13 and DSP40(v) and paragraphs 170 and 175 of the NPPF. I attach very substantial weight to these breaches. The Appeal Development would also breach emerging Local Plan policies NE1, HP4(e) and D2(b) to which I attach limited weight.

**12.6. Reason for refusal (e): ‘The proposal fails to provide sufficient information to demonstrate the satisfactory disposal of surface water.’**

12.6.1. This reason for refusal relies on comments made by Hampshire County Council as the Lead Local Flood Authority (LLFA). The Council’s Statement of Case recognises in paragraph 8.23 that the Appellant had committed to provide the requisite information through the appeal process. Further information has since been provided by the Appellant on 11<sup>th</sup> June 2021 in the form of a ‘Technical Note’ dated 26<sup>th</sup> May 2021 (Core Document CDAA.2b). The LLFA have since reviewed this information and acknowledged their satisfaction in a letter dated 17<sup>th</sup> June 2021 (Appendix A to the main SoCG), which also recommended a suitable condition to be inserted in the event the Appeal is allowed. The Council is content with this and has therefore withdrawn this reason for refusal (main SoCG Paragraph 5.3).

**12.7. Reason for refusal (f): ‘The proposal would result in the loss of best and most versatile agricultural land.’**

12.7.1. The site overlies an area of Grade 1 (excellent quality) and Grade 2 (very good quality) agricultural land, this being categorised as Best and Most Versatile agricultural land (BMV), and currently hosts and provides for farming activity. The Core Strategy recognises this important and finite resource which has helped shape the character of the Borough’s landscape. As well as being essential for agriculture, this resource – which would be sterilised if the Appeal Development were to go ahead – plays an important role in supporting biodiversity habitats.

12.7.2. It is common ground that the loss of BMV agricultural land alone (i.e. if there were no other harms) 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 (main SOCG paragraph 4.10). It is also common ground that the better the quality of agricultural land being lost, the greater the weight to be afforded on the negative side of the planning balance (main SoCG, also at Paragraph 4.10).

12.7.3. I consider the loss of a significant area of Grade 1 and 2 BMV agricultural land under the Appeal Development to be of moderate harm. I accept that development of other sites for housing might also involve loss of BMV agricultural land, given the high prevalence of such land in the Borough. However, this does not decrease the harm

from the loss of such land (just as the fact that housing could be developed on other sites does not decrease the benefit of housing from this Proposal). I therefore disagree with paragraph 8.10.7 of the Revised Environmental Statement (Core Document CDAA.1c), which seeks to downplay the significance of the loss of BMV agricultural land in cumulation with other developments on the basis that agricultural land is needed to provide for housing requirements. This approach skews the balance by downplaying harms. A proper planning balance must factor in the full extent of the harms and the full extent of the benefits.

- 12.7.4. The loss of BMV agricultural land is in breach of LPP1 Policy CS16, LPP2 Policy DSP40(v) and paragraph 170(b) of the NPPF. As set out above, I consider that full weight can be afforded to Policy DSP40 and significant weight to Policy CS16. Policies DS1(m) and HP4(e) of the emerging Local Plan would also be breached. Overall, I give significant weight to the loss of BMV agricultural land.

## **12.8. Reasons for refusal (g) to (l)**

- 12.8.1. As noted above, an informative on the decision notice (Core Document CDC.4) made it clear that had it not been for the overriding reasons for refusal to the proposal, the Council would have sought to address reasons for refusal g) - l) by inviting the Applicant (now Appellant) to enter into a Section 106 agreement. The Appellant has started drafting a Section 106 agreement which may resolve these reasons for refusal, but it is not yet complete. I therefore address each of these reasons for refusal below. The Council will also produce a CIL Compliance Schedule justifying all contributions sought against the tests under Regulation 122 of the Community Infrastructure Levy Regulations 2010 and NPPF Paragraph 54.

## **12.9. Reasons for refusal (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.’**

- 12.9.1. The Council considers that planning obligations to secure the matters specified in reason for refusal (g) are required to make the development acceptable. In the absence of them being secured in a Section 106 agreement, the Appeal Development would conflict with LPP1 Policies CS5, CS17 and CS20, LPP2 Policy DM40(v), emerging Local Plan Policies HP4(e), TIN2, TIN4 and D1 (characteristic (iv)) and NPPF Paragraphs 108, 109 and 127(f).

**12.10. Reason for refusal (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.’**

12.10.1. As Mr Sibbett demonstrates in his evidence, contribution towards the Solent Recreation Mitigation Strategy is necessary to avoid an adverse effect on the integrity of the Solent SPAs. In the absence of a S106 agreement securing such a contribution, permission could only be granted if the tests under Regulation 64 of the Habitats Regulations were met (which the Appellant does not suggest) and the Appeal Development would breach LPP1 Policies CS4 and CS6, LPP2 Policies DSP6, DSP13, DSP15 and DSP40(v), emerging Local Plan Policies NE1, NE3, HP4(e) and D2(b) and NPPF paragraphs 170 and 175.

**12.11. Reason for refusal (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.’**

12.11.1. The Council considers that an obligation for the provision, management and maintenance of open space is necessary to render the Appeal Development acceptable. In the absence of a suitable obligation secured through a Section 106 agreement, the Appeal Proposal would breach LPP1 Policy CS21 and emerging Local Plan Policy NE10.

**12.12. Reason for refusal (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.’**

12.12.1. The Council considers that 40% affordable units are required to render the Appeal Development acceptable. In the absence of a suitable obligation secured through a Section 106 agreement, the Appeal Proposal would breach LPP1 Policy CS18 and emerging Local Plan Policy HP5.

**12.13. Reason for refusal (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.’**

12.13.1. The Council considers that planning obligations to secure the matters specified in reason for refusal (k) are required to make the development acceptable. In the absence of them being secured in a Section 106, the Appeal Development would conflict with LPP1 Policy CS20 and emerging Local Plan Policy TIN4.

**12.14. Reason for refusal (I): ‘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.’**

12.14.1. The Council considers that planning obligations to secure the matters specified in reason for refusal (I) are required to make the development acceptable. In the absence of them being secured in a Section 106 agreement, the Appeal Development would conflict with LPP1 Policy CS20 and emerging Local Plan Policy TIN4.

### **13. BENEFITS OF THE APPEAL DEVELOPMENT**

13.1.1. I consider that the Appeal Development would give rise to some significant benefits, which must be fully factored into the planning balance.

13.1.2. Although the parties differ on the extent of the five-year housing land supply, it is common ground that the shortfall is significant and that the weight to be attached to the delivery of housing from the Appeal Scheme is significant (HLS SOCG paragraph 5.3). I therefore attach significant weight to this benefit.

13.1.3. It is also common ground that there is a significant need for affordable housing (main SOCG paragraph 4.12). I attach significant weight to this benefit.

13.1.4. There are associated economic benefits as a result of the construction process, including the potential creation of new jobs and increased local expenditure. There are also economic benefits from expenditure from future occupants of the proposed houses themselves. I attach significant weight to these benefits.

13.1.5. I accept that the ecological mitigation package may give rise to certain benefits, but the Appellant’s position on net gain is inconsistent (as Mr Sibbett explains), and in any event such benefits are a requirement of adopted and emerging policy and the NPPF (see paragraph 95 of the Newgate Lane decision (Core Document CDJ.4)). Moreover, the Council considers the net environmental impact to be harmful. I therefore give limited weight to the environmental benefits, which are in any event outweighed by the environmental harms.

13.1.6. It is also common ground that the Appeal Site is in a sustainable location (main SoCG Paragraph 2.1), but this is a requirement of the NPPF and local policy, rather than a benefit of the Appeal Scheme.

13.1.7. Overall, I view the benefits of the Appeal Scheme as significant.

### **14. PLANNING BALANCE**

14.1.1. In this section, I proceed on the assumption that the Appellant will submit a S106 unilateral undertaking which allows the Council to withdraw reasons for refusal (g) to

- (l). If the Appellant fails to do so, my conclusion that planning permission should be refused will be further reinforced.
- 14.1.2. As in all cases, the Appeal Proposal must be determined in accordance with the Development Plan unless material considerations indicate otherwise (as set out in section 38(6) of the Planning and Compulsory Purchase Act 2004). The NPPF is a material consideration in the section 38(6) test, but does not displace the primacy given to the Development Plan (see the **Suffolk Coastal** case) (Core document CDK.4).
- 14.1.3. As set out above, I consider the Appeal Development to breach a number of development plan policies and the development plan as a whole. This includes LPP2 Policy DSP40, to which the “greatest weight” must be given, since it sets a plan-led and fully NPPF-compliant approach to circumstances in which (as is currently the case) the Council cannot demonstrate a five-year housing land supply.
- 14.1.4. As a result of the absence of a five-year housing land supply, paragraph 11(d) of the NPPF is engaged unless disapplied. However, in this case the Council considers that the presumption is disapplied by paragraph 177 of the NPPF, since, as Mr Sibbett demonstrates in his evidence, an adverse effect on the integrity of habitats sites cannot be ruled out beyond reasonable scientific doubt.
- 14.1.5. If the Council’s view that an adverse effect on the integrity of habitats sites cannot be ruled out is accepted, it means that planning permission cannot be lawfully be granted unless the tests (the so-called IROPI tests) under Regulation 64 of the Habitats Regulations are met (which the Appellant has not to date suggested).
- 14.1.6. Planning permission also cannot lawfully be granted if the Inspector accepts the Council’s view that the outstanding surveys mean that there is not full knowledge of the likely significant effects of the Appeal proposal (see Regulation 3 of the EIA Regulations and **R v Cornwall County Council ex parte Jill Hardy** [2001] Env LR 25) (Core Document CDK.12)).
- 14.1.7. Should the Inspector find in her Appropriate Assessment that (contrary to the Council’s position) it is certain beyond a reasonable scientific doubt that there would be no adverse effect on the integrity of any habitat’s sites, and should she also find (again contrary to the Council’s position) that the surveys are sufficiently complete, then the Council accepts that NPPF paragraph 11(d) would be engaged given the lack of a five-year housing land supply. In such a scenario (i.e. one in which reason for refusal (b) had been resolved), there would be no “clear reason for refusing the development” under Limb i. and it would therefore be necessary to carry out the tilted balance under the test in Limb ii. Even in these circumstances, the Council considers

that, having regard to the policies in the NPPF and the three dimensions of sustainability, the Appeal Development fails the Limb ii. test because the benefits (significant though they are) would be significantly and demonstrably outweighed by the very substantial adverse effects of the Appeal Development (which in this scenario would be those from reasons for refusal (a), (c), (d) and (f)).

14.1.8. As a result, whether the Appeal is determined on a tilted or un-tilted basis, I consider that planning permission should be refused. Accordingly, I invite the Inspector to dismiss the Appeal.

## **15. CONCLUSIONS**

15.1.1. I conclude that the Appeal should be dismissed and permission for the development proposals refused.