

**FAREHAM BOROUGH COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78 APPEAL**

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**APPEAL** by **Miller Homes** against the decisions of **Fareham Borough Council** to refuse to grant planning permission for **Outline application with all matters reserved (except for the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities.** on **Land East of Down End Road, Portchester, Fareham, Hampshire**

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Planning Inspectorate Reference: APP/A1720/W/21/3272188

Local Authority's Reference: P/20/0912/OA

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**PROOF OF EVIDENCE OF  
STEPHEN JUPP MRTPI  
ON BEHALF OF  
FAREHAM BOROUGH COUNCIL**

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## 1.0 INTRODUCTION

- 1.1. I am a member of the Royal Town Planning Institute. I hold an Upper Second Bachelor of Arts (Honours) Degree in Town and Country Planning and a Master of Laws with Merit in Environmental Law.
- 1.2. I have been employed for some 34 years in town and country planning. I have been a self-employed planning consultant since April 2000. Previously, I was employed at Chichester District Council and Havant Borough Council.
- 1.3. I handle planning policy, landscape impact and enforcement issues on a daily basis. I have extensive experience in dealing with such issues at planning application stage. I have also given planning policy, landscape impact and enforcement evidence in the High Court and at public inquiries and hearings.
- 1.4. I have been brought in by Fareham Borough Council to act on their behalf in connection with appeal proceedings relating to this land. I have viewed the site. I am therefore familiar with its surroundings.
- 1.5. Although I act on behalf of the Council, I understand my professional duty is to assist the Inspector by providing evidence which is true and has been prepared and is given in accordance with guidance produced by the Royal Town Planning Institute. In this regard I can confirm that the opinions expressed are my true and professional opinions.
- 1.6. The appeal is made against the decision of the Council to:

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

- 1.7. My evidence first sets out the planning policy relevant to this appeal along with the relevant planning history. Then I consider the planning merits of the development, having regard to the findings of the inspector in the previous appeal; looking at the latest housing supply figures and other material considerations; and, finally drawing on the conclusions of the Councils expert highways witness, Alan Lewis, who sets out in detail why he considers the

implementation of the proposed alterations to the Downend Road railway bridge would not prioritise pedestrian and cycle movements and as a result would generate higher levels of private travel. Moreover, adopting a proactive stance to determine the application positively the he has considered reasonable alternatives to provide better pedestrian/cycle arrangement and thereby address some of the non-motorised user safety and amenity issues, ~~but these would unacceptably affect the operation of the road because of the vehicle queuing and driver delay that would arise.~~ On the basis of his expert opinion, I find the appeal development to be contrary to Development Plan Policies CS5 and DSP40 and paragraphs ~~109-111~~ and ~~110-112~~ of the NPPF. I then undertake a planning balance, weighing up the identified highway harm against any identified benefits. I conclude planning permission should not be granted. The appeal should therefore be dismissed.

## **2. APPEAL DEVELOPMENT AND SITE DESCRIPTION**

- 2.1 The Appeal Development is described in the decision notice dated 26 April 2019 which is referred to at paragraph 1.2 of the Planning SoCG (CD8).
- 2.2 The application drawings and documents are listed at paragraph 1.6 to 1.8 of the Planning SoCG. (CD8)
- 2.3 The appeal site and surroundings are described in Section 2.0 of the Planning SoCG (CD8).

### **3 DETAILS OF THE REASONS FOR REFUSAL**

#### **Officer Recommendation**

- 3.1 The planning application was subject to an officer recommendation for approval as detailed in the Committee Report (LPA SoC - FBC.1) dated 18<sup>th</sup> November 2020.

#### **Planning Committee Decision**

- 3.2 The Planning Committee resolved to refuse planning permission at the planning committee on 18<sup>th</sup> November 2020. The reasons for refusal are set out at paragraph 1.10 of the Planning SoCG (CD8). The reasons for refusal relate to:

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

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

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

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

*by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.'*

- 3.4 The decision taken by Members is recorded in minutes of the meeting (LPA SoC - FBC.3).

## 4 RELEVANT PLANNING HISTORY

### The 2018 Planning Application

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

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

- 4.2 Whilst there was officer recommendation to Permit [Appendix FBC.11] the scheme the proposal was refused by Fareham Borough Council's Planning Committee (decision issued on 26 April 2019).

- 4.3 The application was refused [Appendix FBC.12] for the following reasons:

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

*a) The proposal would result in a material increase in pedestrian movements along Down End Road across the road bridge over the railway line. The works to the bridge as shown on drawing no. ITB12212-GA-003 Rev B (titled "virtual footway proposal") and the works to the bridge as shown on drawing no. ITB12212-GA-004 Rev B (titled "reduced width formal footway") would provide inadequate footway provision to ensure the safety of pedestrians using the bridge and other highway users. The works to the bridge as shown on drawing no. ITB12212-GA-011 Rev B (titled "priority shuttle working") would result in unacceptable harm to the safety and convenience of users of the highway.*

*b) The application site is not sustainably located in terms of access to local services and facilities."*

### **The Subsequent Planning Appeal**

4.4 Miller Homes subsequently appealed the decision (ref: APP/A1720/W/19/3230015), with an inquiry held from 24 and 26 September 2019. The Inspector's decision [FBC.13] was issued on 5 November 2019, with the appeal being dismissed.

4.5 In considering the appeal, the Inspector concluded (paragraph 97) that the options proposed for the Downend Road railway bridge would either make inadequate provision for pedestrian access, or would unacceptably affect the operation of Downend Road as a result of vehicle queuing and driver delay. The Inspector identified that these impacts would be unacceptable and in conflict with the development plan; Policy CS5 of the *Core Strategy* and Policy DSP40 of the *Development Sites and Policies (DSP)*.

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

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

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

- Given the existing pattern of development in the area, there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site – on this basis, the accessibility to local services and facilities other than by private motor vehicles would not be unreasonable and weighs in favour of the social benefits of the development, thereby rejecting the second reason for refusal;

- The development could be implemented to safeguard the integrity of off- site designated habitats, having a neutral effect on the natural environment;
- The development would lead to significant social and economic benefits arising from the construction and occupation of up to 350 dwellings;
- The development would provide a boost to the supply of market and affordable homes within Fareham Borough; and,
- Whilst there would be some harm to the setting of nationally designated heritage assets, this would be less than substantial, and would be outweighed by the social and economic benefits of the development.

## 5 PLANNING POLICY CONTEXT

- 5.1 The relevant planning policy is set out in section 6.0 of the LPAs Statement of Case and summarised in Section 4 of the Planning SoCG.
- 5.2 By Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine applications for planning permission in accordance with the provisions of the development plan unless material considerations indicate otherwise. This Section of the SoC sets out the relevant planning policy framework for the consideration of this appeal.
- 5.3 The policies detailed within the Council's reasons for refusal (RfR) and for heritage assets are detailed within this Section.
- 5.4 Given the reasons for refusal, the following policies are particularly relevant to the issues at this appeal. I consider that further elaboration is required in order to explain the Council's case.

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

- 5.5 Policy CS5 (Transport and Infrastructure) states in part:

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

- 1... [This part of Policy CS5 is not considered relevant to this Appeal]*
- 2. Development proposals which generate significant demand for travel and/or are of a high density, will be located in accessible areas that are or will be well served by good quality public transport, walking and cycling facilities.*
- 3. The Council will permit development which:*
  - Contributes towards and/or provides necessary and appropriate transport infrastructure including reduce and manage measures and traffic management measures in a timely way;*
  - Does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes;*

- *Is designed and implemented to prioritise and encourage safe and reliable journeys by walking, cycling and public transport.'*

**Local Plan Part 2: Development Sites and Policies – Adopted  
8<sup>th</sup> June 2015**

5.6 The Local Plan Part 2 (LPP2) was adopted on 8th June 2015. The following policy was listed in the reasons for refusal and is relevant to the determination of this appeal.

5.7 The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 (Housing Allocations) makes provision for a situation where there is a shortfall in HLS. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 59 on '*significantly boosting the supply of homes*'. Furthermore, this policy was found sound by the Local Plan Inspector (subject to modifications) in his May 2015 report on the LPP2 (CD4.4). The Inspector recommended that the policy was modified to include criteria for residential development to be considered against in the context of a HLS shortfall. Policy DSP40 is consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing site beyond the settlement boundary when a five-year land supply cannot be demonstrated.

5.8 DSP40 states in full:

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

*Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site is listed in*

*Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.*

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

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

- i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii) The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii) The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps.*
- iv) It can be demonstrated that the proposal is deliverable in the short term; and*
- v) The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

5.9 The supporting text to DSP40 provides at 5.163-4 that:

*"Therefore, further flexibility in the Council's approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets...*

*5.164 In order to accord with policy CS6 and CS14 of the Core Strategy, proposals for additional sites outside the urban area boundaries will be strictly controlled."*

5.10 Policy DSP5 (Protecting and Enhancing the Historic Environment) states, inter alia:

*Designated and non-designated heritage assets are an irreplaceable resource that will be conserved in a manner*

*appropriate to their significance, to be enjoyed for their contribution to the quality of life of this and future generations. The wider social, cultural, economic and environmental benefits of their conservation will also be taken into account in decision making.*

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

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

*Listed Buildings will be conserved by:*

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

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

- 5.11 The Welborne Plan (LPP3) is the third part of the Council's Local Plan and was adopted in June 2015. LPP3 is a site-specific plan which sets out how the new community of Welborne, to the north of the M27 Motorway at Fareham, should take shape over the period to 2036. Separate from any considerations relating to Housing Land Supply, LPP3 is not relevant to the consideration of the appeal proposals.

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

- 5.12 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 5.13 At a meeting of the Council's Executive on February 1<sup>st</sup> 2021 the Executive Leader announced that, following the publication of the revised Planning Practice Guidance on housing need in December 2020, a further consultation will take place on changes to the Publication Local Plan in early summer 2021 after the necessary technical work has been undertaken.
- 5.14 At the Council's Planning & Development Scrutiny Panel on 25<sup>th</sup> May 2021 the Revised Publication Local Plan was considered. The revised Local Development Scheme was passed at Executive on 7<sup>th</sup> June 2021 and Full Council on 10<sup>th</sup> June 2021. The consultation period is from 18<sup>th</sup> June – 30<sup>th</sup> July 2021.
- 5.15 The draft allocation (HA4) [see FBC.4] is for 350 dwellings at Downend Road East. Bullet point L provides a list of highway improvements and L(i) makes reference to a pedestrian footway or footbridge over the existing Downend Road bridge. The accompanying Plan indicates Multi-Modal improvements to Downend Road bridge and approaches.
- 5.16 There is an additional draft allocation (HA56) [see FBC.5] for 550 dwellings at Downend Road East. Bullet point C indicates that primary highway access should be from the A27 (link to Junction 11) and Downend Road, Bullet point D includes a requirement for there to be a safe pedestrian priority crossing of Downend Road north of the existing Downend Road bridge. The accompanying Plan indicates Multi-Modal improvements to Downend Road bridge and approaches including signalled pedestrian crossing as well as a key

pedestrian and cycle link going across Downend Road north of the railway bridge and then south to connect to the Bus Rapid Transit.

### **National Planning Policy Framework (2019)(2021)**

5.17 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. It states:

*Plans and decisions should apply a presumption in favour of sustainable development.*

*For plan-making this means that:*

- a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas<sup>5</sup>, unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area<sup>6</sup>; or*
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**

*For decision-taking this means:*

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, 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<sup>6</sup>; or*
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**

- 6 The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.
- 7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than

75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

- 5.18 Paragraphs [1993](#) to [2082](#) of the Framework set out how to consider the potential impacts of development on heritage assets. In this regard paragraph [1993](#) makes clear:

*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

- 5.19 In terms of how to deal with situations where less than substantial harm is found to exist, paragraph [202196](#) states:

*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

- 5.20 Finally, in terms of consider the impact of development proposals on highway matters paragraphs [109-111](#) and [110-112](#) are considered to be directly relevant they state:

*109. 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.*

*110. Within this context, applications for development should:*

*a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*

*b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*

*c) create places that are safe, secure and attractive –which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*

*d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*

*e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.*

## 6 Proper Approach to Determining this Appeal

### The Section 38(6) test

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

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

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

policies when applying the tilted balance.

- 6.3 In the situation where the Council is unable to demonstrate a 5 year housing land supply, the circumstances where market housing outside of the defined development boundaries of Settlements is permitted are strictly controlled in line with policy DSP40.

### **Housing Land Supply**

- 6.4 The Councils position in terms housing land supply position statement is set out in Chapter 7 of my evidence and the HLS SoCG.
- 6.5 In summary, it is agreed that the LPA is currently unable to demonstrate a five-year housing land supply and that as a result the presumption in favour of sustainable development applies for the determination of this appeal. It is also agreed that whilst the respective parties differ on the precise extent of the current shortfall, with the Council identifying a 3.57 year housing land supply and the Appellant identifying a 1.75 year land supply, the shortfall is material on either basis. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall. Appendix 1 to the Housing Land Supply [HLS] SoCG sets out those sites where the Council and the appellant differ and along with an explanation as to each side's respective positions.

### **Heritage Issues**

- 6.6 It is agreed in the Planning SoCG that impact on the heritage assets needs to be given considerable weight in the planning balance. While the proposed development has the potential to impact on one Grade I listed building (which is also scheduled) and two Grade II\* listed buildings (one of which is also scheduled) any impacts will remain low in magnitude. As such any potential harm will remain less than substantial and, specifically, at the lowest end of this spectrum. The Heritage Statement accompanying the planning application and a review by the Council's Heritage Consultant both

agree with this assessment. Despite this when less than substantial harm is found, the decision maker needs to give considerable weight to the desirability of preserving the setting of the asset. Therefore, it must form an important part of the planning balance. Paragraph [196-202](#) of the Framework states:

*"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*

- 6.7 How the issue of impact upon heritage assets is dealt with in respect of paragraph 11(d) is dealt with below under the subheading 'How should NPPF Paragraph 11(d) be applied?'

#### **Weight given to a breach of DSP40 and CS5**

- 6.8 In cases where a proposal is found to be in breach of policy DSP40, that policy must be given very significant weight in the planning balance. This is because the fact that policy DSP40 is breached puts the development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led.
- 6.9 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy.
- 6.10 To use the words of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37 [CD7.15] ("*Suffolk Coastal*") at [21] the Framework:

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

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

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

6.12 The *Land East of Posbrook Lane, Titchfield* appeal decision [FBC.14] dated 12 April 2019, referred to in the Newgate Lane appeal

[CD7.4], is also useful where Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52) but on respect of Policy DSP40, however, he concluded at Paragraph 68 that:

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

6.13 In addition, the previous appeal decision letter at the current appeal site is relevant [FBC.13]. In this decision letter, dated 5<sup>th</sup> November 2019, which at paragraph 90, Inspector Gould errs on the side of caution and considers the Appellants housing figures to better represent the current situation. However, notwithstanding this fact, he concludes at paragraph 97 that:

*"I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified."*

6.14 Finally, in the recent case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham* (Appeal Refs. APP/A1720/W/20/3252180 and 85 provided at CD7.4 as with other recent appeals, Inspector Jenkins did not see a need to determine the precise extent of the shortfall but considered it to be substantial.

6.15 It follows that the weight to be applied to a breach of policy DSP40, for the purposes of paragraph 11 of the NPPF in the event of a housing land supply shortfall, is the same regardless of the exact extent of the shortfall and therefore if there is a breach of the policy in circumstances reflecting those in this appeal it should be "a matter of the greatest weight."

6.16 At paragraph 54 of the decision letter Inspector Jenkins summarised his conclusions on Highway Safety and stated, inter alia:

*"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."*

6.17 This matter was considered in his Planning Balance section at paragraphs 108 to 111 of his decision letter and due to their relevance, I repeat them in full below:

*108. Firstly, 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.*

6.18 On this basis, it is clear in my submission that even though Policy DSP40 may be out of date by virtue of paragraph 11 and footnote 7, since criterion (v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and accordingly conflict with that requirement must be a matter of the greatest weight. The same equally applies to policy CS5.

#### **How should NPPF Paragraph 11(d) be applied?**

6.19 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74 [CD7.20].

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

6.21 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.'*

6.22 There are two tests set out at NPPF 11(d). 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. The Council considers that there are policies of this type in the Framework, as referenced at footnote 6 of paragraph 11(d) ('habitats sites' and 'designated heritage assets'). In respect of 'habitats sites' which are relevant to the determination and subject to appropriate controls through conditions or a legal agreement it is considered that these matters can be satisfactorily addressed.

6.23 In relation to the weight to be attached to harm found to the significance of listed buildings by development within their setting the Court of Appeal decision of *Barnwell Manor Wind Energy Limited v (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) SSCLG [2014] EWCA Civ 137* emphasises that, in enacting s.66(1), Parliament had intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration (in the procedural sense) by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carried out the balancing exercise. This is the case whether the harm is substantial or less than substantial.

6.24 As to how what is now footnote 6 operates where a footnote 6 policy is in play, Sir Keith Lindblom, Senior President of Tribunals in the

Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74, held at 28-30:

*"28. The crucial question in this appeal is whether, on its true construction, the policy in paragraph 11d)i of the NPPF includes the application of the policy in the first part of paragraph 172, because the application of that policy is capable of providing a "clear reason for refusing" planning permission. In my opinion, as Holgate J. held, it does. The sense of the word "provides" in paragraph 11d)i is that the application of the policy in question yields a clear reason for refusal – in the decision-maker's view, as a matter of planning judgment ... . It is not that the policy itself contains some provision expressed in words one might expect to see in a local planning authority's decision notice. And I do not accept that a policy, when applied, can only provide a "clear reason for [refusal]" if it includes its own self-contained criteria or test, failure of which will be, or will normally be, fatal to the proposal. That is not what the policy in paragraph 11d)i says, and it is not to be inferred from the policy. Nor is there any indication in footnote 6 that this was what the Government intended. Nowhere is it suggested that the footnote includes only some parts of the policies to which it refers, or that only a policy formulated in a particular way will qualify as relevant for the purposes of paragraph 11d)i.*

*29. In my view, as Mr Richard Moules submitted for the Secretary of State, the policy in the first part of paragraph 172, which refers to the concept of "great weight" being given to the conservation and enhancement of landscape and scenic beauty in an AONB, clearly envisages a balance being struck when it is applied in the making of a planning decision in accordance with the statutory regime under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act ... . It is, as the judge recognised, a balance between what can properly be seen, on one hand, as a breach of, or conflict with, the policy and, on the other, any countervailing factors. To speak of a breach of the policy when the development would harm the AONB, or of a conflict with the policy in those circumstances, seems entirely realistic.*

*30. This, in my view, is plain on a straightforward reading of paragraph 172 in its context, having regard to its obvious purpose. The policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the "landscape and scenic beauty" of an AONB, or against harm to that interest. But that, in effect, is the real sense of it – though this, of course, is not the same thing as the proposition that no development will be permitted in an AONB. If the effects on the AONB would be slight, so that its highly protected status would not be significantly harmed, the expectation might – I emphasise "might" – be overcome. Or it might be overcome if the*

*effects of the development would be greater, but its benefits substantial. This will always depend on the exercise of planning judgment in the circumstances of the individual case."*

- 6.25 And as Coulson J in *Forest of Dean DC v. SSCLG [2016] PTSR 1031* at [37] and [47] explained: if (as here), after the application of a "restrictive" policy, the outcome was in favour of development, then the weighted or tilted balance in favour of development under the first limb of what is now paragraph 11(d)(i) falls to be applied in which the heritage harm is weighed in the balance with all the other harms and benefits. It follows that you must give the heritage harm considerable importance and weight in the titled balance under limb (d)(i). This is not a separate reason for refusal, rather a reflection that the balance of harms and benefits under the titled balance includes the heritage harm.
- 6.26 In respect of paragraph 11 d) (ii), I accept that Policy DSP40 is out of date due to the operation of footnote 7. However, it has been found by the local plan inspector along with inspectors in s78 housing appeals to be sound and relevant. As set out earlier a breach of this Policy is a matter of the "greatest weight" as emphasised by Inspector Jenkins in the Newgate Lane appeal decisions.
- 6.27 On this matter, for the reasons set out in the evidence of Alan Lewis, there would be unacceptable impact on highway safety in conflict with CS5 and DSP40(v) which is consistent with the Framework. This harm must also be weighed with the considerable importance and weight attached to the heritage harm when the balance is undertaken. On this basis, there is conflict with the Development Plan taken as a whole. Furthermore, for the reasons I set out later in my evidence, other material considerations would not justify a decision other than in accordance with the Development Plan. For these reasons the planning balance falls in favour of dismissing the Appeal.

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## **7 HOUSING LAND SUPPLY**

- 7.1 Paragraph 73 of the NPPF requires local planning authorities to *'identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five-years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five-years old.'* Deliverable sites are sites which are available now, offer a suitable location for development now and must be achievable with a realistic prospect that housing will be delivered on the site within 5 years.
- 7.2 An HLS SoCG has been agreed between the parties.
- 7.3 It is agreed that the LPA is currently unable to demonstrate a five-year housing land supply and that as a result the presumption in favour of sustainable development applies for the determination of this appeal.
- 7.4 It is agreed that whilst the respective parties differ on the precise extent of the current shortfall, with FBC identifying a 3.57 year housing land supply and the Appellant identifying a 1.75 year land supply, the shortfall is material on either basis. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.
- 7.5 It is also agreed that it is appropriate to assess the five-year land supply position over the latest period for which information is available, which is 1 January 2021 to 31 December 2025.

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

- 7.6 The PPG clearly 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 account of is where an alternative approach to the standard method is used (Paragraph: 011 Reference ID: 2a-011-20190220).
- 7.7 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 (Paragraph: 004 Reference ID: 2a-004-20201216). The 2014-based household projections use calendar years, not financial, therefore the household growth has been calculated from 2021 to 2031 for a base date of January 2021 as per the PPG. Paragraphs 427 to 428 of the Inspectors recommendation to the Land off Station Road, Long Melford appeal decision (APP/D3505/W/18/3214377) also judged that the starting point should be the current year [FBC.15]. In this case, the base date for the supply is 1st January 2021.
- 7.8 The base date of 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 producing a minimum local housing need of 541 homes per annum.
- 7.9 In the light of this change in circumstance, the Council has it is updated its five-year housing requirement based on the affordability ratio that now applies from 1st April 2021. On this basis, the updated housing requirement for the period 1st April 2021 – 31st December 2025 is 2,695 dwellings, assuming a requirement of 508 per annum for the 3 months 1st January – 31st March 2021 and 541 dwellings per annum for the 4 years and 9 months between 1st April 2021- 31st December 2025. This produces a housing requirement of

539dpa. The appellant contends that the figure should be 541dpa but it is agreed in the HLS SoCG that the difference is not material.

### **The Deliverable Housing Supply**

- 7.10 In order to be considered deliverable, it is agreed that 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, namely 1st January 2021.
- 7.11 Additionally, permitted sites which do not involve major development and sites with detailed planning permission should be considered deliverable unless there is clear evidence that homes will not be delivered within five-years. Sites with outline planning permission for major development, sites allocated in the development plan, sites with a grant of 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.
- 7.12 Starting with the February 2021 Five-Year Housing Supply of 1<sup>st</sup> January 2021 as set out in FBC.8, an adjustment has also been made to the supply of deliverable homes over the period 1st April 2021 – 31st December 2025 to take account of the revised trajectory for Welborne as set out in the Housing Action Plan provided at CD8.6.
- 7.13 It is now the case that 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 the Housing Delivery Test Action Plan published on 8th June 2021. However, the 450 dwellings are projected to be delivered from the 1st April 2021 – 31st March 2026 and therefore an adjustment has been made on a pro-rata basis to reduce the delivery over the period to 31st December 2025 to 390 dwellings (a reduction of 60 dwellings which are assumed to be delivered in subsequent period 1st January 2026 – 31st March 2026).

7.14 The updated total housing supply over the period 1st April 2021 – 31st March 2025 is therefore adjusted to 2,310 dwellings.

#### Updated Five Year Housing Land Supply Position

<b>HOUSING REQUIREMENT</b>		
A	Local Housing Need: Dwellings per annum	539
B	Local Housing Need: Total requirement for 1st January 2021 to 31st December 2025	2,695
	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	539
D	<b>Total housing requirement for period from 1st January 2021 to 31st December 2025</b> [B+C]	<b>3,234</b>
E	Annual requirement for period from 1st January 2021 to 31st December 2025	647
F	<b>Expected housing supply for the period from 1st January 2021 to 31st December 2025</b> <i>(Supply as set out in February 2021 HLS Position Statement (FBC.8) with adjustments as described above)</i>	<b>2,310</b>
G	Housing Land Supply Position over period from 1st January 2021 to 31st December 2025 [F-D]	-924
H	<b>Housing Supply in Years [F /E]</b>	<b>3.57</b>

#### Deliverability of Housing Sites and the Local Plan Review

7.15 In the very recent Newgate Lane North & South appeal decisions [CD.7.4] Inspector Jenkins concluded that he considered it likely that "a shortfall in housing land supply will persist for some significant time to come" (paragraph 92). In reaching this view he 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. An update on all three of these matters is set out below and this shows that all three issues have progressed significantly since then.

### ***Nitrate mitigation***

- 7.16 In February 2019, Natural England updated its advice to local councils to reflect recent European case law and now recommends an Appropriate Assessment is undertaken within the Borough of Fareham for every application for a net increase of one dwelling<sup>1</sup>.
- 7.17 Natural England has highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) are likely to have a significant effect upon European Protected Sites (EPS).
- 7.18 Sites with a resolution to grant planning consent have been 'held back' since February 2019 where developers have not been able to demonstrate that their proposals maintain or reduce the levels of nitrates leaving their site or developers are unable to provide the necessary mitigation.
- 7.19 However, on 30th September 2020 the Council entered into a legal agreement with the Hampshire and Isle of Wight Wildlife Trust and Isle of Wight Council to secure nitrate mitigation at Little Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.
- 7.20 The first application to benefit from the mitigation scheme offered by the Hampshire & Isle of Wight Wildlife Trust was determined by the Council's Planning Committee on 18th November 2020 and permission was issued on 30th November 2020 for 16 dwellings at 403 Hunts Pond Farm. Since then, decisions on a further 24 planning applications for residential development have been permitted, which together with Hunts Pond Farm, totals 215 dwellings.
- 7.21 A second nitrate mitigation scheme at Warnford Park which was not available at the time of Inspector Jenkins' decision at Newgate Lane North & South is now available. Warnford Park has the capacity to deliver 3,023kg in nitrate credits.

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<sup>1</sup> The latest advice and calculation method is set out in v5 dated June 2020

7.22 By way of an example of the mitigation offered at Warnford Park, planning permission was recently granted on 27<sup>th</sup> May 2021 for nine apartments at 22-27a Stubbington Green, Stubbington (planning application reference P/18/1410/FP submitted in December 2018). Appended to this updated statement is the Officer Report to Planning Committee (FBC.16) in which the means of nitrate mitigation is clearly set out at paragraphs 8.27 – 8.30 (in this instance 6.3kg of nitrate mitigation credits were required at Warnford Park). Also appended is the Appropriate Assessment carried out by the planning officer using a recently developed pro-forma (FBC.17). Under the Council's duty to consult under Regulation 63 of The Conservation of Habitats and Species Regulations 2017, the Appropriate Assessment was sent to Natural England on 20<sup>th</sup> April. A response was received six days later on 26<sup>th</sup> April (appended at FBC.18) at which point the Appropriate Assessment was finalised ready for use. This example shows how this mitigation scheme, like Little Duxmore also, is effective in bringing forward housing sites stalled by the need for nitrate mitigation. It also demonstrates that the Council is well prepared to deal with such mitigation proposals from applicants, has an established and straight forward process for carrying out Appropriate Assessments quickly and easily and is able to consult Natural England and receive responses promptly without further delay.

7.23 A further third mitigation scheme has recently been approved for use by the Council. This mitigation scheme relates to land at Coleman's Lane on the Isle of Wight. As with Warnford Park and Little Duxmore before it, a tri-partite legal agreement between Fareham Borough Council, the owners of Coleman's Lane and the Isle of Wight Council is due to be completed imminently. The legal agreement as drafted is composed in a very similar manner to that for the aforementioned previous schemes and again secures mitigation land at Coleman's Lane against which applicants/developers may purchase credits. The land at Coleman's Lane has the capacity for 486kg of nitrate credits. Appended at FBC.19 is the Officer report recommending approval be given by the Director of Planning and Regeneration to enter into the legal

agreement. Approval was subsequently given on 18<sup>th</sup> May this year.

- 7.24 Inspector Jenkins' comments in relation to the previously dismissed appeal are noted. However, the Council maintains that its significant progress and proactive approach to nitrate mitigation solutions means that there is no longer any impediment to applicants and developers in obtaining the appropriate mitigation to address this matter. The uncertainty referred to by Inspector Jenkins (paragraph 89 of the decision) has been suitably addressed and should no longer be seen as having a material impact on the delivery of sites identified in the Council's future five year housing land supply.

### **Welborne**

- 7.25 The Council has received a revision to the planning application including a Supplementary Planning Statement (Appendix FBC.20), Viability Statement and EIA Statement of Conformity. The covering letter submitted to the Council dated 8<sup>th</sup> June 2021 [CD8.7] explains the purpose of the revisions. It says:

*"... 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."*

- 7.26 The Council have published the revisions to the planning application

on its website and entered a further period of consultation which will run until 5<sup>th</sup> July. After then it is intended to take the application back to the Council's Planning Committee as explained in the applicant's covering letter. A copy of the written statement of the leader is provided at FBC.21 and the Council's Press Release on Welborne is provided at FBC.22.

**The Future Housing Supply: The Emerging Local Plan**

7.27 The Council has now published its Local Development Scheme (June 2021) (CD5.2). Table 1, sets out the Fareham Local Plan 2027 timetable confirming the Council's intention to consult on a revised publication local plan (Reg. 19) in Spring/Summer 2021 and submit the plan to the Secretary of State in Autumn 2021. The Examination is anticipated in Winter/Spring 2021/22 and the adoption of the Plan in Winter/Spring 2022. Contrary to the Appellant's opinion, the Council considers that this timetable is realistic.

7.28 PINs maintain a list of Local Plans being progressed which details when they were submitted for examination and when they were adopted. Whilst there are a number of Local Plans that have been submitted since 2019 but have not yet been adopted, there are several examples which have progressed to adoption between 10 months and 1 year 9 months from submission. This suggests that the Council's anticipated timetable is not unrealistic.

<b>Local Council</b>	<b>Submitted</b>	<b>Adopted</b>	<b>Timescale</b>
Chesterfield Borough Council	28/06/2019	15/07/2020	1 year 1 month
Durham 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

7.29 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.

7.30 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.

**The Disputed Housing Land Supply Sites.**

7.31 As set out in paragraph 3.1 of the HLS SoCG the Appellant considers that the Council is able to demonstrate a deliverable supply of 1,139 homes whilst the Council considers that it is able to demonstrate a deliverable supply of 2,310 homes. From these numbers, the

Appellant considers that the Council is able to demonstrate a 1.75 year housing land supply whilst the Council considers that it is able to demonstrate a 3.57 year housing land supply.

7.32 Using the table on housing and supply at 7.14 I have included a further column on the Table below to enable a comparison between the respective positions of the Council and the Appellant

	<b>HOUSING REQUIREMENT</b>	LPA Figures	Appellant Figures
A	Local Housing Need: Dwellings per annum	539	541
B	Local Housing Need: Total requirement for 1st January 2021 to 31st December 2025	2,695	2,705
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	539	541
D	<b>Total housing requirement for period from 1st January 2021 to 31st December 2025 [B+C]</b>	<b>3,234</b>	<b>3,246</b>
E	Annual requirement for period from 1st January 2021 to 31st December 2025	647	649
Sites which should be considered deliverable unless there is clear evidence to the contrary			
F	Outstanding Small permitted sites (1-4 dwellings)	69	69
G	Outstanding Large permitted sites with full planning consent (5+dwellings)	402	402
Sites which should only be considered deliverable where there is clear evidence that completions will begin on the site within five-years			
H	Outstanding large permitted sites with outline planning permission	296	205
I	Dwellings with a Resolution to Grant Planning Permission	1132	336
J	Sites identified on a Brownfield Register	276	28
K	Allocations	33	-3
L	Windfall allowance	102	102
M	<b>Expected housing supply for the period from 1st January 2021 to 31st December 2025 [E+F+G+H+I+J+K+L]</b>	<b>2,310</b>	<b>1139</b>

	<i>(Supply as set out in February 2021 HLS Position Statement (FBC.8) with adjustments as described above)</i>		
N	Housing Land Supply Position over period from 1st January 2021 to 31st December 2025 [M-D]	-924	-2107
O	<b>Housing Supply in Years [M /E]</b>	<b>3.57</b>	<b>1.75</b>

7.33 The respective positions in regard to disputed sites are set out in the table in Appendix 1 of the HLS SoCG. It should be noted that, given the Council's Housing Land Supply Position, the Appellant has undertaken a high-level assessment and has not interrogated in detail all sites included on the Council's list.

**Other Actions taken to address the shortfall**

7.34 Whilst expediently progressing the Local Plan, the Council has and continues to take all possible steps to facilitate the delivery of housing in the Borough. This includes the following actions which have been at the forefront of the Council's approach:

- Taking significant action to find nitrate mitigation solutions to 'unlock' development that has been held back as described above. Since 18<sup>th</sup> November 2020, 215 dwellings have been granted consent and further dwellings are in the pipeline and are due to be consented shortly.
- Taking significant action to resolve complex viability issues at Welborne. Welborne Garden Village (LPP3), is scheduled to deliver up to 6,000 dwellings. This strategic site is already an extant allocation within the LPP3. FBC is working in partnership with the developer and other organisations including Hampshire Council, Homes England and MHCLG to progress development at this site. Planning consent was granted on 27<sup>th</sup> January 2021 subject to the s106 which is well advanced. The Council is confident that delivery of housing at Welborne will be able to commence, enabling the delivery of the site to increase up to 240 dwellings per annum as a robust assessment, and likely

higher numbers.

**Evidence that Policy DSP40 is effective**

- 7.35 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 Posbrook Lane, Titchfield; Downend Road, Porchester; and Land West of Old Street and Newgate Lane (north) and (East) as 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.
- 7.36 As made clear by Inspector Jenkins in the Newgate Lane appeals at paragraphs 108 to 111:

*108. Firstly, 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*

*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<sup>10</sup>, 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.*

- 7.37 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.
- 7.38 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.
- 7.39 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.

- 7.40 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.
- 7.41 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.

### **Affordable Housing Need and Supply**

#### *Need*

- 7.42 The Council's latest evidence-based document identifying affordable housing need in the Borough is the Affordable Housing Strategy 2019 [CD6.4].
- 7.43 It is agreed in the Housing Land Supply Statement of Common Ground that the Affordable Housing Strategy indicates that there is a need for 3,500 affordable homes in the Borough over the period 2019-36, equivalent to 206 affordable homes per annum (including an allowance of 500 for new households and those falling into need). On this basis the shortfall in the delivery of affordable housing between 2011/12 - 2018/19 is that as set out in the Table below.

	<b>Cumulative delivery*</b>	<b>Shortfall</b>	
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

*Affordable Housing Comparison Shortfall (\*Figures based on MHCLG live tables records).*

7.44 The cumulative affordable housing need is therefore 1,648 dwellings (206dpa x8) between 2011/12 – 2018/19 and the affordable housing shortfall is 1,038 dwellings based on MHCLG live tables which record 610 dwellings being delivered over this period.

7.45 Furthermore, there is no evidence that the shortfall in the supply of affordable homes 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 shown in the table below:

<b>Year</b>	<b>No. on Waiting List</b>
June 2018	995
Aug 2019	1100
Jan 2020	1082
Jan 2021	1125

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

7.47 The Council acknowledges that the south of Fareham Borough does have a higher level of affordable need than other areas of the Borough, such as the western wards. This is based on an understanding that households in need often prefer to stay near

their existing family networks, schools or places of work. However, the location of the appeal site adjacent to Gosport means that it is not well placed to meet the affordable housing needs of these particular residents close to where they arise.

- 7.48 Having regard to the above position, the Council accepts that there is unmet affordable need in Fareham Borough ~~however the extent of this need is disputed.~~

*Future Affordable Housing Supply*

- 7.49 The Council appointed a dedicated post in 2018 to take a strategic lead on progressing affordable housing opportunities in the Borough. Since that date, the Council has pushed forward with delivering its pipeline of new affordable homes. Typically, projects start on site within approximately 12 months of a planning consent and delivery is expected within five years.
- 7.50 Since adoption of the Affordable Housing Strategy in 2019 the following affordable housing schemes have been completed or are due to be progressed during 2021/22:
- P/19/0840/FP Former Merjen Engineering, Station Road Portchester (16No. sheltered flats). Planning approved 17<sup>th</sup> April 2020. The contractors are appointed and are due start on site imminently.
  - P/17/0956/FP The former Hampshire Rose site (18No. flats). Planning approved 25<sup>th</sup> May 2018. 6 units completed and occupied. Practical completion on remaining 12No. flats is due in May 2021.
  - P/19/0915/FP Land at Stubbington Lane (11No. houses]. Contractors appointed and start on site expected imminently.
  - P/15/0391/FP 123 Bridge Rd scheme (5No. houses at Oak Tree Close) completed.
  - P/20/0702/FP (9No. Shared Ownership flats). Planning approval granted Nov 2020 on the former Coldeast Scout Hut site. Architects appointed to undertake the technical design stage and

contractor expected to be appointed later this year.

- P/20/1513/D3 (2No. large disabled adaptive Social Rent homes, Queens Road. Planning Approval granted on 10<sup>th</sup> February 2021 and demolition of the existing structure on site took place in March 2021. Architects will shortly be appointed for technical design with contractor appointment expected later this year.

7.51 The above projects alone will together provide 61 new affordable homes in the Borough, expecting to be completed by the end of 2022.

7.52 Future years will also see progress with projects Assheton Court, Crossfell Walk and Menin House:

- Assheton Court, Portchester (proposed demolition of 33 sheltered flats and redevelopment with circa 60 units). Detailed plans being formulated.
- 15 Crossfell Walk (demolition of 2 No. flyover flats and construct 1No. 3 bed house. Planning application submitted P/21/0361/FP).
- Menin House, North Fareham (Council Executive approval to progress the principle to redevelop, currently 24 No. units, redevelopment with circa 30-50 units).

7.53 An allocated site at Wynton Way (10 No. dwellings) as detailed in FBC.8 is due to come forward within five years.

7.54 Meanwhile work continues to identify future sites and projects as part of an ongoing rolling supply. The Council is therefore taking all possible steps to increase the supply of affordable housing within the Borough as evidenced by the range of schemes outlined above. Officers provided an update report on the Affordable Housing Strategy to the Housing Scrutiny Panel on 25<sup>th</sup> March 2018 (FBC.14) which demonstrates that significant progress is being made against its objectives.

7.55 Local Registered Providers using their Strategic Partnership relationship with Homes England will further boost housing supply

outside of s106 requirements. Sites include North Funtley (P/17/1135/OA, 27 dwellings) and land east of Southampton Road (P/18/0068/OA, 105 dwellings) where the sites will deliver up to 100% as affordable homes. Both of these sites within the Council's 5YHLS and will be delivered within 5 years providing a total of 132 affordable dwellings.

- 7.56 These and similar initiatives are likely to boost the direct delivery of affordable housing by the Council and other strategic partners beyond s106 requirements in the short/medium term compared to past levels.

#### Welborne

- 7.57 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.
- 7.58 A viability review mechanism will be in place, starting from the delivery of 3,000 home, 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.
- 7.59 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.

## 8 THE LOCAL PLANNING AUTHORITY'S CASE

8.1 There is a single reason for refusal in this case as set out below:

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

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

8.2 The [2019-2021](#) NPPF is clear that developments should be refused if "there would be an unacceptable impact on highway safety" and Policy CS5 in this case requires that development be refused if there is an adverse affect on safety. The Appeal decision at Boxford [APP/D3505/W/18/3197391](#) [FBC.23] is helpful since Inspector Warder considered the affect of the [then] new paragraph 109 of the Framework in relation to highway safety. That was also a case in the relevant highway authority (Suffolk County Council) had not objected to the application - similar to the case in the previous appeal at Down End Road when they [Hampshire County Council] were shown to have adopted an incorrect approach - but Inspector Warder confirmed that the District Council was entitled to reach its own conclusions on the highway effects of the proposal (paragraph 20 last line). In respect of highway safety, he found that (paragraph 24) if there would be an unacceptable affect on highway safety, in conflict with [\[then\]](#) paragraph 109 of the Framework, the development should be refused permission. This was in a context where those from the development could use a new link which

would avoid the narrowest section of footpath (paragraph [22]).

- 8.3 It follows that CS5 is consistent with the Framework and should be given full weight. Furthermore, if you find that there would be an adverse effect on the safety of pedestrians or other highway users this would be unacceptable in Framework and CS5 terms and should in and of itself lead to the refusal of permission. It is submitted that the evidence clearly demonstrates that the development would make an already unsafe situation at Downend Bridge worse as outlined below.
- 8.4 The Council's highway witness is Alan Lewis, Associate Director – Transport & Highways of the Glanville Group. In his evidence he has clearly set out in great detail how the appeal proposal fails to comply with national and local planning policy with regards to the reason for refusal given by the Council in its decision notice dated 25<sup>th</sup> November 2020 [CD3.3].
- 8.5 In Section 5 of his evidence, he examines the pedestrian crossing provision, provides an assessment to the latest standard and concludes the arrangement is unsafe and that the appeal proposal does not make acceptable pedestrian crossing provision on Downend Road for future residents. He then contemplates the potential for controlled crossings and considers how these might be integrated into the proposed shuttle-working traffic lights to provide a for future residents, assuming the Appellant might address policy need.
- 8.6 In Section 6 he examines the effect on highway users and focus on cyclists to demonstrate again that the highway proposals are unsafe. His evidence shows that the appeal proposal would result in unacceptable harm to the safety of cyclists and other slow moving vehicles~~users of the highway~~. Whilst he contemplates how the junction might be modified to be safer he concludes that ~~the proposals will not preserve adequate levels of cycle amenity and instead create an intimidating environment for existing and future~~

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~~cyclistseven with these modifications he still considers the environment for cyclists will fall short of the local plan policy tests.~~

8.6

~~8.7 In Section 7 he demonstrates that the appeal proposal would also unacceptably harm the operation of the highway. He then reviews the traffic forecasts to assess the operational effects of the proposed highway improvements, taking account of the modifications necessary to preserve modest levels of safety for pedestrians and cyclists. Whilst he has not been able to produce a suite of modelling scenarios to fully represent the assessment of different development traffic forecasts and design years, he is still able to conclude that conditions at the junction will be severe.~~

~~8.8.7~~At the end of section 8 he sets out his conclusions, in 8.68 to 8.102, as follows:

*The development results in a material increase in pedestrian and vehicular movements on Downend Road.*

*The Downend Road proposals are unsafe for pedestrian crossing movements and cyclists through the shuttle-working traffic lights. This is clearly contrary to Policy CS5 of the adopted Fareham Borough Local Plan Part 1 which is only permissive of development which "does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes". For the same reasons the appeal proposal conflicts with paragraphs 111 and 1120(c) of the NPPF.*

~~*Based on an assessment of forecast conditions I have concluded that the shuttle-working bridge will operate above capacity; creating conditions that will be 'severe' contrary to paragraph 109 of the NPPF and adversely affecting the operation of the road network and cycle routes contrary to local plan Policy CS5 as set out above.*~~

*My evidence shows that it is clearly the case that the appeal proposal has unacceptable traffic implications and therefore fails to comply with the relevant test in Policy DSP40 (v) of the adopted Fareham Borough Local Plan Part 2.*

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*For the reasons I set out above, I respectfully suggest that the sound transport planning judgement must be to dismiss the appeal.*

8-98.8 On the basis of the conclusions of Alan Lewis, I consider those identified unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the LP2 along with paragraphs 109111 and 1102(c) of the Framework. I further consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.

## 9 PLANNING BALANCE

- 9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".*

- 9.2 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
- 9.3 The approach detailed within the preceding paragraph, has become known as the 'tilted balance' in that it tilts the planning balance in favour of sustainable development and against the Development Plan.

### Harms

- 9.4 For the reasons given above in Chapter 8 of my evidence, I have found that the development with the implementation of the proposed alterations to the Downend Road railway bridge would ~~make inadequate provision~~ be unsafe for pedestrian and cyclist

access via Downend Road. ~~Should the appellant seek to amend the scheme along the lines contemplated by Alan Lewis in order to address these safety issues, there would be unacceptable effects on the operation of the road because of the vehicle queuing and driver delay that would arise.~~ I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the LP2 and therefore with the Development Plan as a whole. There would also be conflict with paragraphs ~~109-111~~ and ~~110~~112(c) of the Framework. I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that the greatest weight should be attached to the conflict with the development plan that I have identified. This follows the approach adopted by Inspectors in the previous Down End Road appeal; the recent appeals at Newgate Lane (north) and (South) and the Boxford appeal that I have referred to.

- 9.5 There would also be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the ~~previously mentioned~~ social and economic benefits arising from the development.

### **Benefits**

- 9.6 I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. I agree with the previous inspector that it is something that weighs for the social benefits of the development.
- 9.7 The proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply.

- 9.8 The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area.
- 9.9 In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight.
- 9.10 I give moderate weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources.
- 9.11 Although I give a number of the benefits above substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.

### **Conclusions**

- 9.12 Despite these identified benefits, the identified conflicts with the development plan, with particular reference to CS5 and DSP40, are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
- 9.13 I consider that the identified unacceptable harm to pedestrian [and cyclist safety](#) ~~and the operation of the public highway~~ could not be addressed through the imposition of reasonable planning conditions. As made clear above, I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
- 9.14 I therefore conclude that the appeal should be dismissed.

|

## **10 SUMMARY AND CONCLUSIONS**

10.1 The description of the appeal development is set out in section 2. The planning application was subject to an officer recommendation to approve and the April Planning Committee resolved to refuse planning permission for the reasons set out in the decision notice.

### *Planning Policy*

10.2 My evidence identifies those policies relevant to the appeal in Local Plan Part 1: Fareham Borough Core Strategy (Adopted August 2011) and Local Plan Part 2 Development Sites.

10.3 I have set out my assessment of the extent to which relevant development plan policies accord with the *Framework* and concluded on the weight that can be afforded to them in the planning balance.

10.4 I accept in evidence that the Council does not currently have a five year housing land supply. LPP2 Policy DSP40 provides a framework for decision making in such circumstances, having regard to the Development Plan as a whole.

10.5 My evidence also considers other material considerations, including the Framework, the draft Local Plan and the weight afforded to each.

10.6 By virtue of 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. The decision maker must then turn to other material considerations, which in the case of the Appeal Development include the NPPF.

10.7 I accept that the Council does not currently have a five year housing land supply and the tilted balance in favour of sustainable

development applies. This does not mean that weight cannot still be afforded to the development plan policies in light of the *Suffolk Coastal* Supreme Court judgement and the Hallam Land Appeal Court judgement. My evidence deals with the factors determining the weight to be applied and concludes on the appropriate weight that can be afforded as a result.

10.8 I refer to heritage issues and the considerable weight that must be given to any harm. I highlight the importance of the plan led system.

10.9 The Council has demonstrated that the Appeal Development conflicts with local plan policy CS5 in that it fails to prioritise and encourage safe and reliable journey's by walking, cycling and public transport. ~~It has also demonstrated that the uncontrolled crossings of Down End Road are unsafe, and these will adversely affect the potential for walking trips, resulting in an increase in private vehicle trips. Similarly, the Council has shown that the width and operation of the shuttle working traffic lights will detrimentally affect the potential for cycle trips, and this will also result in increases in private vehicle travel. Together~~ These effects will reduce use of public transport and therefore increase development traffic such that the proposed improvements to the Down End Road railway bridge, will adversely affect the safety and operation of the local road network.

*Weight given to a breach of DSP40 and CS5 and how should NPPF Paragraph 11(d) be applied?*

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10.10 My evidence explains the conflict with Policies CS5 and DSP40.

10.11 Policy DSP40 in particular, provides a policy framework for the determination of planning applications in circumstances where there is a HLS shortfall. The Council has been using this Policy as a central part of its assessment of a large number of planning applications proposing residential development on sites within the countryside. All of the criteria of Policy DSP40 must be met, and my assessment is that whilst the appeal development meets some of the criteria, there is significant conflict with remaining criteria such that the proposal conflicts with the Policy as a whole.

10.12 I have summarised the issues raised in Mr Lewis' evidence to demonstrate the highway safety concerns that result from the appeal proposal and conflict with CS5 and DSP40(v).

10.13 I confirm that emerging Development Plan is at an early stage and limited weight should be afforded to it. I consider the proposal against the three overriding objectives of the *Framework* objectives of sustainable development, economic and environmental and social.

10.14 I have assessed the weight to be afforded to the relevant development plan policies, outlining the consistency of the development plan policies with the *Framework*. This increases the weight which may be afforded to them, in accordance with *Framework* paragraph 21<sup>93</sup>.

10.15 I have had regard to the extent of the shortfall, the Council's action to address the shortfall, and the purposes of the development plan policies.

10.16 In line with previous inspectors and especially the conclusions of Inspector Jenkins in the Newgate Lane appeals, I consider that Policy DSP40 can be afforded the greatest weight in the planning balance given that it is designed specifically to address a situation where there is a HLS shortfall. I consider policy DSP40 to be an up to date housing policy which is wholly consistent with the *Framework*.

10.17 It follows that the weight to be applied to a breach of policy DSP40, for the purposes of paragraph 11 of the NPPF in the event of a housing land supply shortfall, is the same regardless of the exact extent of the shortfall and therefore if there is a breach of the policy in circumstances reflecting those in this appeal it should be "a matter of the greatest weight."

10.18 On this basis, it is clear that even though Policy DSP40 may be out of date by virtue of paragraph 11 and footnote 7, conflict with criterion (v), which seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications,

must be a matter of the greatest weight. The same applies to policy CS5.

10.19 The Appeal Development must be determined in accordance with the development plan unless material considerations indicate otherwise as set out in the Section 38(6) test. I have explained the planning balance judgement to be applied where the tilted balance at NPPF Paragraph 11 (d) (ii) is engaged.

#### *Heritage Assets*

10.20 There would also be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.

#### *Highways*

10.21 My evidence and that of Mr Lewis clearly identifies the significant harm which would result from the Appeal Development. We have collectively set out in evidence the conflict with the relevant development plan policies. We have found that the development with the implementation of the proposed alterations to the Downend Road railway bridge would make inadequate provision for pedestrian and cyclist access via Downend Road. ~~Should the appellant seek to amend the scheme along the lines contemplated by Alan Lewis in order to address these safety issues, there would be unacceptable effects on the operation of the road because of the vehicle queuing and driver delay that would arise.~~ As a result, I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the LP2 and therefore with the Development Plan as a whole. The appeal proposal also conflicts with paragraphs 111 and 112(c)<sup>99</sup> of the *Framework* as there is "... *an unacceptable impact on highway safety*".

### *Housing Supply*

10.22 I accept that the current housing land supply shortfall is a material consideration to be weighed against this conflict. My evidence identifies that on the basis of the Council's own figures the housing land supply is 3.57 years. This equates to 924 dwellings over 5 years.

10.23 The Council has resolved to grant consent for a significant scale of residential development, including sites proposed for development in its emerging Local Plan Review (with a large number of additional applications in the process of being determined), and is also making good progress on the delivery of a significant number of dwellings through Welborne, a large-scale Garden Village development. It is therefore evident that the Council is taking significant steps to address the shortfall.

10.24 I accept that the provision of 350 dwellings (186 dwellings during a five year period) 40% of which would be affordable, would go towards reducing the HLS shortfall and meeting the Borough's housing needs, and should be afforded significant weight. I accept that there would be further limited economic benefits, which should be afforded moderate weight, including temporary construction jobs; the support to the local economy through the increase in local population; and the payment of New Homes Bonus.

10.25 However, this material consideration does not outweigh the significant harm associated with the appeal development in respect of highway safety.

### *Conclusions*

10.26 I conclude that the Appeal Development should be refused planning permission. Whilst the appeal scheme would conform with some Development Plan policies, I consider that the highway harm is so great that the conflict with Policies CS5 and DSP40 is such the appeal development would conflict with the Development Plan taken as a whole. On this basis and for the reasons I have set out above I do

not consider that the other material in this case justify a decision other than in accordance with the Development Plan. Accordingly, I invite the Inspector to dismiss the appeal.