

**IN THE MATTER OF  
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF  
LAND SOUTH OF  
ROMSEY AVENUE,  
PORTCHESTER, FAREHAM.**

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**OPENING SUBMISSIONS  
ON BEHALF OF  
THE APPELLANTS**

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1. These Opening Submissions are made on behalf of the Appellants in respect of the refusal by Fareham Borough Council of an outline application for 225 dwellings (including affordable housing), bird conservation area and public open space ('the scheme') on land south of Romsey Avenue, Portchester, Fareham ('the site').
2. The site lies outside but immediately adjacent to the out of date adopted settlement boundary in what is recognised as a sustainable location for residential development. Although in what is designated as 'countryside', there is no landscape objection. The Council acknowledges that it cannot demonstrate the required 5 year housing land supply, in breach of national policy in the NPPF, that the shortfall is significant (even if the precise extent of it is in dispute) and that footnote 8 and para 11(d) of the NPPF are engaged so as to render the 'most important policies' out of date.
3. Against this backdrop the Council refused planning permission for what remain now three substantive reasons:
  - (a) Impact on the conservation interest of the Solent SPA;

- (b) Impact on the conservation interest of the site;
- (c) Displacement of parking on adjacent roads.

4. Each of these will, in due course, be subject to evidence, but the following may be said at the outset to set the scene.
5. The spatial application of the Fareham Local Plan is itself out of date as a result of it still being founded on a pre-NPPF assessment of development needs (see *Hopkins Homes*). In addition, as noted, there is an acknowledged failure to be able to demonstrate a 5 year housing land supply. Policy DSP40 is engaged in such circumstances, to operate as an exception policy to the otherwise constraining policies in the local plan, subject to its own five criteria. As an exceptions policy it operates more generously in the application of those five criteria than would the restraining policies. Compliance with the five criteria mean that a scheme which sits outside the out of date settlement boundary is none-the-less compliant with the development plan *taken as a whole*. According para.11(c) applies.
6. In addition, policy DSP40 is itself one of the ‘most important’ policies for the purposes of para. 11(d). It is, itself, caught by that deeming provision, such that it is to be considered out of date, and were there to be a breach of any one of the criteria, that breach may itself be accorded reduced weight. As has been found recently by inspectors, it is apparent from the continued absence of a 5 year land supply, the Council has, in practice been too stringent in the application of DSP40’s criteria and it has not been allowed to fulfil its purpose of ensuring a sufficient quantum of housing is permitted.
7. Of the five criteria, only one, criterion (v) is said to be breached and for three specific reasons. Acknowledging the other four are met is, itself, material, as that indicates strongly the locational merits of the site as suitable for residential development, and the scheme’s own merits as a response to developing in this location.
8. Of the three issues identified above as falling into DSP40(v), the objection in respect of ‘on-site’ ecology is, on the evidence, now overcome, save that the witness for the Council states a legal point as regards needing to delay approval until completion of

up-date surveys for dormice and bats. He does not raise a substantive allegation of harm to either dormice or bats, whose habitats are being enhanced, not lost. If he is correct in his interpretation of the regulations (which the Appellant disputes), the inspector would be prevented by legislation from granting permission until the survey results were delivered. DSP40(v) would not be in play. As such, for us to be considering DSP40 and the prospect of a planning permission, it is either because he is not right, or that the surveys have been undertaken and reported (at which point this issue falls away).

9. The same may be said of the SPA objection. If the Council's witness is correct (which is disputed) that an appropriate assessment cannot favourably be concluded in respect of the development scheme, then the Habitats Regulations would operate to prevent the Inspector from granting permission. As such, similarly, DSP40(v) would not be a consideration; permission would have to be refused. Put the other way, for DSP40 to be in play, it is because the Inspector has concluded that the appropriate assessment does come out favourably.
10. For these reasons, if we are contemplating the operation of DSP40, the only substantive objection is the third point above, namely the point around parking displacement (now augmented by a point on service vehicles). Four things need to be said at the outset:
11. First, this is not an objection supported by the Highways Authority. Both safety and operation of the highway network were considered by the relevant statutory body and found acceptable. The scheme accords with para. 111 of the NPPF.
12. Second, this is an objection voiced by local residents and adopted by members at the time without any technical evidential support. As noted above, it is an 'amenity' objection, not a highway safety or capacity objection.
13. Thirdly, even if the subsequent evidence were right, the potential displacement would be limited in both number of cars and distance and in the context of extensive off-street parking.
14. Fourthly, it will be submitted in due course that to refuse a scheme for 225 dwellings (including affordable housing) in a sustainable location, in the absence of a 5 year housing supply and without a capacity or safety objection under para 111 of the NPPF

because a small number of residents may have to park a little further than they are currently wont is to take an unreasonable position; in no way can it be sensibly said that this ‘inconvenience’ significantly and demonstrably outweighs the substantial and undisputed planning benefits of the scheme.

15. Accordingly, even were the Council’s highways ‘amenity’ evidence to withstand scrutiny, permission should be granted for this scheme in the public interest and in accordance with national policy and the need to boost the supply of housing, both nationally and locally.

CHRISTOPHER BOYLE QC

10<sup>th</sup> August 2021

Landmark Chambers,  
180 Fleet Street,  
London, EC4A 2HG.