

FAREHAM

BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

STATEMENT OF CASE

Appeal by: Foreman Homes

Appeal Site: Land east of Posbrook Lane, Titchfield, Fareham PO14 4EY

Appeal Proposal: Outline planning application for the erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane

Planning Inspectorate Ref: APP/A1720/W/20/3254389

Local Planning Authority Ref: P/19/1193/OA

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FBC1	Fareham Local Plan 2037 webpage (https://www.fareham.gov.uk/planning/farehamlocalplanreview.aspx) as of 5 th March 2021.
FBC2	Executive Leader announcement regarding Fareham Local Plan 2037 – 1 st February 2021
FBC3	Five Year Housing Supply Position Paper reported to Council's Planning Committee on 17 th February 2021
FBC4	Forest of Dean v SoS 2016
FBC5	Land west of Old Street – appeal decision APP/A1720/W/18/3200409
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- FBC8** Consultation response from Montagu Evans
- FBC9** Consultation response from Historic England
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1.0 Introduction

- 1.1 This Statement of Case relates to the appeal lodged by Foreman Homes ('the Appellant') to the Planning Inspectorate ('PINS') on 16th June 2020 (PINS reference APP/A1720/W/20/3254389). The statement sets out the case for the local planning authority ('the LPA') Fareham Borough Council ('FBC' or 'the Council') in respect of the appeal which is made against the failure of the Council to determine the planning application reference P/19/1193/OA at land east of Posbrook Lane, Titchfield, Fareham within the prescribed time period.
- 1.2 The appeal development is:
- “Outline planning application for the erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane”*
- 1.3 The appeal will be determined by way of a hearing the date of which is yet to be set.
- 1.4 Throughout this statement references are made to documents provided by the Appellant which are already before the Inspector. In the interests of simplicity and to avoid unnecessary duplication those documents have not been appended again to this statement but instead appropriate references given to the Appellant's submission using the prefixes "SB". Any further documents appended to this statement are given the prefix "FBC".

2.0 The Appeal site and surroundings

- 2.1 The appeal site comprises part of a field located to the south of the Bellfield housing estate and public open space on the south edge of Titchfield. The appeal site within the red edge measures approximately 4 hectares in area. A further area of land edged blue on the submitted plans measures approximately 8.4 hectares in area.
- 2.2 The site lies outside of the defined urban settlement boundaries within the countryside. The site forms part of a Strategic Gap (The Meon Gap) as designated within the adopted local plan. The site is also identified in the Solent Waders & Brent Goose Strategy as a Primary Support Area.
- 2.3 The field is currently used for the grazing of horses. Two pedestrian public rights of way (Footpaths 34 & 39) cross the site and the adjacent land to the south.

- 2.4 The western edge of the site runs alongside Posbrook Lane where there is a mature hedgerow with a field gate set within it. Two dwellings set in large plots and agricultural land lie on the opposite side of the lane. Approximately 300m to the north is the junction of Posbrook Lane with Coach Hill/Common Lane. Titchfield village centre lies to the east of this junction, Warsash to the west and access on to the A27 via St Margaret's Lane to the north. In the opposite direction to the south of the site Posbrook Lane leads to the coast and Hill Head.
- 2.5 At the south-western edge of the site is a row of substantial and mature trees along the boundary with a cluster of dwellings at Posbrooke House, Great Posbrook and Barn Close. There are two Grade II* Listed buildings in the Great Posbrook farmstead – the farmhouse and the large aisled barn. Some other houses in Barn Close are locally listed (on the Council's Local List of Buildings of Special Architectural or Historic Interest).
- 2.6 The land on which the appeal site forms part of slopes away gently from west to east towards the Titchfield Canal and River Meon. The adjacent fields to the north-east and south of the appeal site are shown on the submitted location plan to also be within the appellant's control as indicated by being edged blue. Beyond the appeal site to the east lies the Titchfield Canal. A line of trees stretches along the western bank of the canal whilst a public right of way (Footpath 48) runs alongside the other side of the canal. Beyond that is the floor of the Meon Valley before the land rises again on the opposite side of the River Meon towards Titchfield Road (B3334).

3.0 The Appeal proposal

- 3.1 Outline planning permission is sought for the principle of the development of up to 57 dwellings on the site and the means of access into the site. All other matters, including appearance, landscaping, layout and scale are reserved for subsequent determination at reserved matters stage. An illustrative site plan has been provided to demonstrate how the development could be laid out on the site and the extent of landscape planting which could be provided.
- 3.2 The 'blue edged' land to the east of the appeal site is proposed as a Bird Conservation Area (BCA). The "red edge" of the application site cuts through the BCA so as to include proposed drainage features including a permanently wet balancing pond.

4.0 The Appeal background and putative reasons for refusal

- 4.1 A previous planning application (LPA reference P/17/0681/OA) was received in June 2017 for the following:

Outline Planning Application For Scout Hut, Up To 150 Dwellings, Community Garden, Associated Landscaping, Amenity Areas And A Means Of Access From Posbrook Lane

- 4.2 That previous application was refused by the Council in December 2017 and an appeal was subsequently lodged (PINS reference APP/A1720/W/18/3199119). The appeal was heard by way of an inquiry held in November 2018 and a decision was issued in April 2019. The appeal was dismissed. The appeal decision letter is document **SB1**.

- 4.3 A further application, now the subject of this appeal, was made by Foreman Homes in November 2019 (LPA reference P/19/1193/OA). An appeal (this appeal) was lodged on 16th June 2020, the same day as Officers of the Council published the agenda for the following week's Planning Committee meeting. The Officer report recommended the application be refused (**SB6**). An update to the report the day before the meeting informed Members that an appeal had been lodged (**SB7**) and Members resolved that planning permission would have been refused had there still been the opportunity to determine the proposal (as the minutes of the 24th June 2020 Planning Committee meeting at **SB8** show).

- 4.4 The putative reasons for refusal given by the Council's Planning Committee are as follows:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17 & CS18 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP5, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan,

And paragraphs 170 and 196 of the NPPF and is unacceptable in that:

- a) *The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) *The application site lies outside of the defined urban settlement boundary on land which is considered to form part of a valued*

landscape. As a result the proposed development would result in a range of significant adverse landscape and visual effects, harmful to the landscape character, appearance and function of the countryside and failing to respect or respond positively to the key characteristics of the surrounding area;

- c) The proposal would result in less than substantial harm to, and fail to preserve and enhance, the setting of nearby Grade II* Listed Buildings;*
- d) The proposal would result in the loss of best and most versatile agricultural land;*
- e) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;*
- f) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the loss of part of a Primary Support Area for Brent geese and waders;*
- g) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the additional generation of nutrients entering the water environment;*
- h) In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;*
- i) In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;*
- j) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- k) In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the*

proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.

5.0 Relevant local planning policy

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011

5.1 Policy CS2 – Housing Provision states:

“3,729 dwellings will be provided within the Borough to meet the South Hampshire sub-regional strategy housing target between 2006 and 2026, excluding the SDA. Priority will be given to the reuse of previously developed land within the existing urban area.

Housing will be provided through;

- *Completions between April 2006 and March 2010 (1,637 units);*
- *Sites that already have planning permission (1,434 units);*
- *Dwellings on previously developed land;*
- *Sites allocated in earlier local plans;*
- *The Strategic Development Allocation at the former Coldeast Hospital;*
- *The Strategic Development Location at Fareham Town Centre; and*
- *New allocations and redesignations to be identified through the Site Allocations and Development Management DPD.*

The supply of sites will be kept up-to-date through a regular review of the Strategic Housing Land Availability Assessment which will identify sites. Those that are allocated will be done so through the Site Allocations and Development Management Development Plan Document. The Annual Monitoring Report will inform the pace of housing delivery and update the housing trajectory. Development will achieve a mix of different housing sizes, types and tenures informed by the Housing Market Assessment and the Council’s Housing Strategy.”

5.2 Policy CS4 – Green Infrastructure, Biodiversity and Geological Conservation covers a range of related planning issues concerning habitats, nature conservation sites and green infrastructure. The relevant part of the policy reads as follows:

“Green Infrastructure will be created and safeguarded through:

- *Investing in appropriate management, enhancement and restoration, and the creation of new resources including parks, woodland and trees, and wildlife habitats;*

- *Not permitting development that compromises its integrity and therefore that of the overall green infrastructure framework”.*

5.3 Policy CS5 – Transport Strategy and Infrastructure states (relevant extracts only):

“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:

...

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 journey's by walking, cycling and public transport.”*

5.4 Policy CS6 – The Development Strategy states:

“Development will be focused in:

- *Fareham (Policy CS7), the Western Wards & Whiteley (Policy CS9), Portchester, Stubbington & Hill Head and Titchfield (Policy CS11);*
- *Land at the Strategic Development Locations to the North of Fareham (Policy CS13) and Fareham Town Centre; (Policy CS8);*
- *Land at the Strategic Development Allocations at the former Coldeast Hospital (Policy CS10) and Daedalus Airfield (Policy CS12).*

In identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries including their review through the Site Allocations and Development Management DPD, taking into consideration biodiversity / potential community value, the character, the accessibility, infrastructure and services of the settlement and impacts on both the historic and natural environment. Opportunities will be taken to achieve environmental enhancement where possible.”

5.5 Policy CS14 – Development Outside Settlements states:

“Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agricultural, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible. In coastal locations, development should not have an adverse impact on the special character of the coast when viewed from the land or water.”

5.6 Policy CS15 – Sustainable Development and Climate Change states:

“The Borough Council will promote and secure sustainable development by directing development to locations with sustainable transport options, access to local services, where there is a minimum negative impact on the environment or opportunities for environmental enhancement. Development must not prejudice the development of a larger site.

This will be achieved by:

- *Ensuring that the scale and density of the proposal makes an efficient use of land. With a minimum of 60dph within areas with high multi-modal transport accessibility and good access to a range of social, environmental and economic infrastructure, taking account of the character of the location.*
- *Seeking to achieve the following timescale and levels for the Code for Sustainable Homes and the equivalent for non residential development unless it can be demonstrated to be unviable:*
- *Ensuring that there is sufficient capacity available, or will be made available, in existing infrastructure to meet the needs of the new development including adequate land and funding for waste management.*
- *Avoiding unacceptable levels of flood risk and proactively managing surface water through the promotion of sustainable drainage techniques.”*

5.7 Policy CS16 – Natural Resources and Energy states:

“New development will be expected to safeguard the use of natural resources by:

- Demonstrating the latest best practice for energy efficiency, passive solar design and water conservation in the construction and use of the buildings;*
- Taking measures to reduce carbon emissions, pollution and waste during the construction and operation of new developments through orientation, layout, design and material selection;*
- Reducing, reusing and recycling waste on-site;*
- Preventing the loss of the best and most versatile agricultural land (Grades 1, 2 or 3a of the Natural England Agricultural Land Classifications System);*
- Protecting mineral resources from permanent development, without first allowing for extraction, which would lead to the sterilisation of the deposit.*

Development (1 dwelling or more and 500m² or more of non-residential floorspace) will be encouraged to contribute to the Fareham target of 12MW of renewable energy by 2020. Major developments (250 dwellings or more or 5,000 sq.m or more of non-residential floorspace) should aim to maximise on-site renewable energy production and resource efficiency. In such cases, the extent of contribution should be demonstrated, taking account of viability. The generation of energy from renewable or low carbon sources will be permitted unless there are judged to be unacceptable social, environmental or economic impacts.”

5.8 Policy CS17 – High Quality Design states in part:

“All development, buildings and spaces will be of a high quality of design and be safe and easily accessed by all members of the community. Proposals will need to demonstrate adherence to the principles of urban design and sustainability to help create quality places. In particular development will be designed to:

- respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials,*
- provide continuity of built form, a sense of enclosure with active frontages to the street and safety of the public realm,*
- ensure permeable movement patterns and connections to local services, community facilities, jobs and shops,*
- create a sense of identity and distinctiveness and one that is legible,*

- enable and/or encourage a mix of uses and diversity in an area,
- ensure that the public realm has pedestrian priority, is safe, secure, functional and accessible, and is constructed of quality materials and well maintained,
- enable buildings to provide flexible accommodation, which can be adapted to suit all members of a community throughout their lifetime,
- provide green infrastructure, including landscaping, open spaces, greenways and trees within the public realm, and
- provide appropriate parking for intended uses taking account of the accessibility and context of a development and tackling climate change.

In addition new housing will be required to:

- secure adequate internal and external space, dwelling mix, privacy, and sunlight and daylight to meet the requirements of future occupiers.”

5.9 Policy CS18 – Provision of Affordable Housing states:

“The Council will require the provision of affordable housing on all schemes that can deliver a net gain of 5 or more dwellings.

- *On sites that can accommodate between 5 and 9 dwellings developers will be expected to provide 30% affordable units OR the equivalent financial contribution towards off-site provision.*
- *On sites that can accommodate between 10 and 14 dwellings developers will be expected to provide 30% affordable units.*
- *On sites that can accommodate 15 or more dwellings developers will be expected to provide 40% affordable units.*

Development proposals will be required to provide a mixture of dwelling types, sizes and tenures reflecting the identified housing needs of the local population.

Where development viability is an issue, developers will be expected to produce a financial assessment in which it is clearly demonstrated the maximum number of affordable dwellings which can be achieved on the site.

Should a site fall below the above identified thresholds but is demonstrably part of a potentially larger developable site, the Council will seek to achieve affordable housing on a pro rata basis.

The level of affordable housing provision will also be subject to other planning objectives to be met from the development of the site.”

5.10 Policy CS20 – Infrastructure and Development Contributions states:

“Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider. Contributions or provision may also be required to mitigate the impact of development upon infrastructure. Detailed guidance on provision or contributions is or will be set out in Supplementary Planning Document(s) including any standard charges introduced through the Community Infrastructure Levy.

Provision or financial contributions will be required to include arrangements for on-going maintenance where necessary and appropriate.

Phasing of development will be related to the provision of infrastructure. Consideration will be given to pooling of contributions towards the cost of facilities.”

5.11 Policy CS21 – Protection and Provision of Open Space states:

“The Borough Council will safeguard and enhance existing open spaces and establish networks of Green Infrastructure to add value to their wildlife and recreational functions. Development which would result in the loss of or reduce the recreational value of open space, including public and private playing fields, allotments and informal open space will not be permitted, unless it is of poor quality, under-used, or has low potential for open space and a better quality replacement site is provided which is equivalent in terms of accessibility and size.

Proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided as follows:

- *Parks and Amenity Open Space 1.5 ha / 1,000 population*
- *Outdoor Sport – 1.2 ha / 1,000 population*
- *Children’s Play Equipment – 14 pieces of equipment per 1,000 1-12 year olds*
- *Youth Facilities – 1 youth facility/MUGA per settlement area*

In addition to these types of open spaces, where existing provision is insufficient to provide for the additional population, the Borough Council will seek the provision of accessible greenspace which meets the standards set out

in the South East Green Infrastructure Framework including Accessible Natural Green Space standards.”

5.12 Policy CS22 – Development in Strategic Gaps states:

“Land within a Strategic Gap will be treated as countryside. Development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.

Strategic Gaps have been identified between Fareham/Stubbington and Western Wards/Whiteley (the Meon gap); and Stubbington/Lee on the Solent and Fareham/Gosport.

Their boundaries will be reviewed in accordance with the following criteria:

- a) The open nature/sense of separation between settlements cannot be retained by other policy designations;*
- b) The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;*
- c) In defining the extent of a gap, no more land than is necessary to prevent the coalescence of settlements should be included having regard to maintaining their physical and visual separation.”*

Local Plan Part 2: Development Sites and Policies – Adopted 8th June 2015

5.13 Policy DSP1 – Sustainable Development states:

“When considering development proposals, the Council will take a positive approach that reflects the "presumption in favour of sustainable development" contained in the National Planning Policy Framework. It will always work proactively with applicants to find solutions that enable proposals to be granted permission wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application, or where relevant policies are out-of-date at the time of making the decision, the Council will grant permission, unless material considerations indicate otherwise. This will include taking into account whether or not:

- i. the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; and/or*
- ii. specific policies in the National Planning Policy Framework indicate that development will not be supported.”*

5.14 Policy DSP2 – Environmental Impact states:

“Development proposals should not, individually, or cumulatively, have a significant adverse impact, either on neighbouring development, adjoining land, or the wider environment, by reason of noise, heat, liquids, vibration, light or air pollution (including dust, smoke, fumes or odour).

Development should provide for the satisfactory disposal of surface and waste water, and should not be detrimental to the management and protection of water resources.”

5.15 Policy DSP3 – Impact on Living Conditions states:

“Development proposals should ensure that there will be no unacceptable adverse impact upon living conditions on the site or neighbouring development, by way of the loss of sunlight, daylight, outlook and/or privacy.”

5.16 Policy DSP5 – Protecting and Enhancing the Historic Environment states:

“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.*

Development affecting a conservation area will be permitted where it preserves or enhances its character, setting and appearance, and

- a) takes account of the relevant Conservation Area Character Appraisal and Management Strategy;*
- b) does not involve the loss of important features of an individual building that contribute to character and appearance of the conservation area and /or its setting;*
- c) its form, bulk, scale, height, massing, alignment, proportion, material, building form and use are appropriate, including having regard to the surrounding buildings, spaces and views; and*
- d) it does not involve the demolition or partial demolition of a building or structure that positively contributes to the area, without clear and convincing justification.*

The Council will conserve Scheduled Monuments, and archaeological sites that are demonstrably of national significance, by supporting proposals that sustain and where appropriate enhance their heritage significance. Proposals that unacceptably harm their heritage significance, including their setting, will not be permitted.

Non-designated heritage assets including locally listed buildings, historic parks and gardens, and sites of archaeological importance will be protected from development that would unacceptably harm their Architectural and historic interest, and/or setting taking account of their significance.”

5.17 Policy DSP6 – New Residential Development Outside of the Defined Urban Settlement Boundaries states:

“There will be a presumption against new residential development outside of the defined urban settlement boundaries (as identified on the Policies Map). New residential development will be permitted in instances where one or more of the following apply:

- i. It has been demonstrated that there is an essential need for a rural worker to live permanently at or near his/her place of work; or*
- ii. It involves a conversion of an existing non-residential building where;
a) the buildings proposed for conversion are of permanent and substantial construction and do not require major or complete reconstruction; and
b) evidence has been provided to demonstrate that no other suitable alternative uses can be found and conversion would lead to an enhancement to the building’s immediate setting.*
- iii. It comprises one or two new dwellings which infill an existing and continuous built-up residential frontage, where:
a) The new dwellings and plots are consistent in terms of size and character to the adjoining properties and would not harm the character of the area; and
b) It does not result in the extension of an existing frontage or the consolidation of an isolated group of dwellings; and
c) It does not involve the siting of dwellings at the rear of the new or existing dwellings.*

A change of use of land outside of the defined urban settlement boundary to residential garden will only be permitted where:

- i. It is in keeping with the character, scale and appearance of the surrounding area; and*
- ii. It will not detract from the existing landscape; and*
- iii. It respects views into and out of the site.*

New buildings should be well-designed to respect the character of the area and, where possible, should be grouped with existing buildings.

Proposals should have particular regard to the requirements of Core Strategy Policy CS14: Development Outside Settlements, and Core Strategy Policy CS6: The Development Strategy. They should avoid the loss of significant

trees, should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts, or detrimental impact on the character or landscape of the surrounding area.”

5.18 Policy DSP13 – Nature Conservation states:

“Development may be permitted where it can be demonstrated that;

- i. designated sites and sites of nature conservation value are protected and where appropriate enhanced;*
- ii. protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;*
- iii. where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and*
- iv. The proposal would not prejudice or result in the fragmentation of the biodiversity network.*

Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that (this section of the policy should not be applied to impacts on SPA designated sites which are subject to stricter protection tests as set out in The Conservation of Species and Habitats Regulations (as amended) 2010);

- i. Impacts are outweighed by the need for, and benefits of, the development; and*
- ii. Adverse impacts can be minimised and provision is made for mitigation and, where necessary, compensation for those impacts is provided.*

Enhancements that contribute to local habitat restoration and creation initiatives as set out in the Hampshire Biodiversity Action Plan (or other similar relevant document) will be supported.”

5.19 Policy DSP14 – Supporting Sites for Brent Geese and Waders states:

“Development on ‘uncertain’ sites for Brent Geese and/or Waders (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be permitted where studies have been completed that clearly demonstrate that the site is not of ‘importance’.

Development on 'important' sites for Brent Geese and/or Waders, (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be granted planning permission where:

- i. it can be demonstrated that there is no adverse impact on those sites; or*
- ii. appropriate avoidance and/or mitigation measures to address the identified impacts, and a programme for the implementation of these measures, can be secured.*

Where an adverse impact on an 'important' site cannot be avoided or satisfactorily mitigated, an Appropriate Assessment will be required to determine whether or not the proposed development would have an adverse effect on the integrity of the Special Protection Areas supporting sites. Where an adverse effect on the integrity of a Solent Special Protection Area cannot be mitigated, planning permission is likely to be refused."

5.20 Policy DSP15 – Recreational Disturbance on the Solent Protection Areas states:

"In Combination Effects on SPA

Planning permission for proposals resulting in a net increase in residential units may be permitted where 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. In the absence of a financial contribution toward mitigation, an Appropriate Assessment will be required to demonstrate that any 'in combination' negative effects can either be avoided or satisfactorily mitigated through a developer provided package of measures.

Direct Effects on Special Protection Areas

Any application for development that is of a scale, or in a location, such that it is likely to have a direct effect on a European-designated site, will be required to undergo an individual Appropriate Assessment. This may result in the need for additional site-specific avoidance and/or mitigation measures to be maintained in perpetuity. Where proposals will result in an adverse effect on the integrity of any Special Protection Areas, planning permission will be refused."

5.21 Policy DSP40 – Housing Allocations states:

“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 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.”*

Fareham Local Plan 2037

- 5.22 The Council is in the process of producing a new Local Plan to replace the currently adopted Local Plan Parts 1 & 2. By way of an explanation as to the progress made with the new plan the summary page from the Council’s website has been reproduced at **FBC1**.
(<https://www.fareham.gov.uk/planning/farehamlocalplanreview.aspx>)

5.23 At a meeting of the Council's Executive on February 1st 2020, 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. The Local Development Scheme will be revised accordingly. This will be presented to Members for pre-scrutiny, Executive approval and then Council sign-off during late spring. The full announcement of the Executive Leader is provided at **FBC2**.

5.24 Taking these factors into account the Council considers that the emerging Local Plan cannot be afforded any significant weight in the determination of this current appeal.

6.0 Weight to be afforded to adopted Local Plan policies

Housing Land Supply

- 6.1 At the time of submitting this statement the Council's most recently published housing land supply is the Five Year Housing Land Supply (5YHLS) Position Paper that which was reported to the Council's Planning Committee on 17th February 2021 (provided as **FBC3**). The position paper identifies that the Council can currently demonstrate a housing land supply of 4.2 years based on applying a 20% buffer and an identified need using the standard method of 508 dwellings per annum.
- 6.2 The Appellant's statement was submitted in September 2020 – before the most recent change to the standard methodology against which housing requirement should be calculated and before the results of the housing delivery test (HDT). Given that, and the fact that the statement is now over six months old, it is presumed the Appellant will wish to submit revised evidence to the Inspector prior to the hearing. This is understandable and the Council may wish in turn to respond accordingly to aid the Inspector's understanding of each party's respective position. However, based on the Appellant's previous observations on the Council's 5YHLS position, Mr Brown considered that the Council could only demonstrate a 1.20 year supply.
- 6.3 Regardless of which position the Inspector considers to be more accurate, it is common ground between the parties that at this present moment in time the Council cannot demonstrate a five year supply of housing land against its requirement. It is also common ground that the shortfall is material on either basis.

Weight to be given to out of date policies

- 6.4 Paragraph 73 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.

- 6.5 In the absence of a five-year supply of deliverable housing sites, the Council considers that policy DSP40 is the principal development plan policy that guides whether schemes will be considered acceptable.
- 6.6 In such circumstances, where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, the fact that the proposal is in breach of policy DSP40 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. 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 (**SB15**) ("*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."

- 6.7 The following paragraphs give various examples of how previous Inspectors have afforded weight to local plan policies which are considered out-of-date. All of the appeals referred to are in Fareham Borough.

Land east of Down End Road, Portchester (**SB14**) (5 November 2019)

- 6.8 There was difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). At paragraph 90, the Inspector Gould errs on the side of caution and considers the Appellants figure better represents the current situation, however, notwithstanding this fact, he concludes at paragraph 97 that "great weight" should be attached to the conflict with Policy DSP40, CS5 and the development plan.
- 6.9 Whether or not the tilted balance is engaged does not determine the weight to be given to policies (whether they be out of date or not) which remains a matter of planning judgment for the decision maker. This was made clear by both the Court of Appeal and the Supreme Court in *Suffolk Coastal* (see for example Lord Carnwath at paragraphs [54]-[56]). The fact that the most important policies for determining the application (including DSP40) are rendered out of date by virtue of a lack of housing land supply simply triggers paragraph 11(d). This factor has no bearing on whether DSP40 should be given reduced weight.

- 6.10 In this appeal the tilted balance was engaged. At paragraph 100 Inspector Gould concludes that that the adverse impacts of the granting planning permission would significantly and demonstrably outweigh the benefits as a whole - a decision he has reached having applied the tilted balance set out in NPPF paragraph 11(d)(ii). It was common ground between the parties going into the inquiry that heritage matters did not amount to a separate reason for refusal because the less than substantial harm to the significance of the heritage assets, when this harm was weighed against the public benefits of the proposal, did not provide a clear reason for refusal of permission pursuant to paragraph 11(d)(i). That harm was, however, weighed in the balance along with the other harms and benefits when the Inspector carried out the tilted balance under 11(d)(ii), following the approach set out by Coulson J in *Forest of Dean DC v. SSCLG [2016] PTSR 1031* at [37] and [47] (**FBC4**).
- 6.11 The Council's case in this current appeal is that the development proposals would clearly result in less than substantial harm to the setting of the Grade II* Listed Buildings. However, even if the Inspector does not agree with this assertion, and if an Appropriate Assessment has concluded there would be no adverse effects on European Protected sites such that NPPF paragraph 177 did not apply so the tilted balance was engaged, it follows that the balancing exercise carried out at Portchester is directly comparable to the current appeal at Posbrook Lane.

Previous appeal for 150 dwellings at Land East of Posbrook Lane (**SB1**) (April 2019)

- 6.12 In this Appeal Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. Inspector Stone also determined that because of the lack of a 5YHLS policies to protect the countryside such as CS14, 22 and DSP6 did not have full weight rather they had significant weight. In 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."

Land West of Old Street, Stubbington (**FBC4**) (January 2019)

- 6.13 In the case of the Land West of Old Street, Stubbington (PINS reference APP/A1720/W/18/3200409), as with the previous 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.”

Conclusion

- 6.14 The Council considers Policy DSP40 can be afforded full weight in the planning balance given that it is designed specifically to address a situation where there is a HLS shortfall. Furthermore, policy DSP40 is wholly consistent with the NPPF (2019).
- 6.15 With regard to other relevant policies, whether or not the policies themselves are 'out-of-date' is not the determinative factor. In the context of a 5YHLS shortfall, the weight to be afforded to the relevant development plan policies is a matter of planning judgement for the decision-maker, as confirmed in the Supreme Court judgement in Suffolk Coastal. All of the policies relevant to the principle of development form part of a wider development strategy which seeks to protect the countryside and focus development on previously developed land and strategic sites.

6.16 For these reasons, whilst full weight cannot be afforded to the Development Plan policies in the context of a lack of 5YHLS (with the exception of DSP40), substantial, determinative, weight can still be afforded to them.

7.0 Proper approach to determining this appeal

The Section 38(6) test

- 7.1 By Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 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.

Presumption in Favour of Sustainable Development

- 7.2 Paragraph 59 of the NPPF seeks to significantly boost the supply of housing.
- 7.3 As already stated above, paragraph 73 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out- of-date.
- 7.4 Paragraph 11 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are "out-of-date". It states:

"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, granting planning permission unless:
 - i. The application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed⁶; 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.”*

7.5 Footnote 6 to Paragraph 11 reads (emphasis added):

“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.”

7.6 The test set out at the second limb of paragraph 11 has become known as ‘the tilted balance’ as it tilts the planning balance in favour of granting permission. However, there are two reasons why the tilted balance does not apply in this instance.

Appropriate Assessment

7.7 NPPF Paragraph 177 states:

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

7.8 The wording of Paragraph 177 was revised in the February 2019 publication of the NPPF to ‘re-engage’ the presumption in favour of sustainable development where the appropriate assessment process had been positively concluded.

7.9 Paragraph 65 of the previous Posbrook Lane appeal decision (**SB1**) reads:

“The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was

required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.”

- 7.10 The Council considers this to be the correct approach. The appeal proposal is likely to have significant effects on habitats sites as set out in reasons for refusal e, f & g. Unless an Appropriate Assessment has concluded that the proposal will not adversely affect the integrity of the habitats site the appeal must be determined on an unweighted basis in accordance with the development plan unless material considerations indicate otherwise (the test under Section 38(6) as set out above). An Appropriate Assessment under The Conservation of Habitats and Species Regulations 2017 must be carried out by the Competent Authority which, for the purposes of determining planning appeals, is the Inspector appointed to act on behalf of the Secretary of State. In exercising their duty under the Habitat Regulations a Competent Authority must, for the purposes of the assessment under the Regulations, consult the appropriate nature conservation body [Natural England] and have regard to any representations made by that body.

Harm to designated heritage assets

- 7.11 There are two tests set out at NPPF 11(d). It is the correct approach 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. These include NPPF policies protecting ‘designated heritage assets’.
- 7.12 NPPF paragraph 196 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.”*
- 7.13 In the light of the judgment in *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin) (**FBC4**), the test at NPPF Paragraph 196 should be undertaken first;

and if this test is failed, then planning permission should be refused in accordance with NPPF Paragraph 11(d)(i).

7.14 In particular, in the Forest of Dean, Mr Justice Coulson first considered the judgments of the Court of Appeal in *Barnwell Manor Wind Energy Ltd v East Northants DC* [2014] EWCA Civ 137, and of Mr Justice Lindblom (as he then was) in *R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin), as to the correct approach to take to in the light of the statutory duties to protect heritage assets. Those cases decided as follows:

- a. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 required "special regard" to be had to the desirability of preserving the building or its setting.
- b. The desirability of preserving or enhancing listed buildings should be afforded "considerable importance and weight".
- c. A finding of harm to the setting of a listed building gave rise to a strong presumption against planning permission being granted - the presumption was a statutory one, and whilst that presumption can be rebutted, the other material considerations (or "public benefits" under the terms of the NPPF) must be "powerful enough to do so".
- d. In particular, Mr Justice Lindblom said as follows at [51] of his judgment in *Forge Field*, with regard to paragraph 134 of the 2012 NPPF (the predecessor to paragraph 196 of the current NPPF) and a finding of "less than substantial harm" to a heritage asset:

"51. ... Even if the harm would be "less than substantial", the balancing exercise must not ignore "the overarching statutory duty imposed by section 66(1), which properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings" (paragraph 28). The error made by the Inspector in Barnwell was that he had not given "considerable importance and weight" to the desirability of preserving the setting of a listed building when carrying out the balancing exercise in his decision. He had treated the less than substantial harm to the setting of the listed building as a less than substantial objection to the grant of planning permission (paragraph 29)."

7.15 Accordingly, and in the light of the harm identified by the Council in relation heritage assets, the tilted balance is not engaged for this reason also.

7.16 Even if the tilted balance is engaged, then that does not mean that weight cannot still be afforded to the development plan policies. The Suffolk Coastal Supreme Court (Appendix 1 to this statement) judgment confirms that where the tilted balance is engaged, the weight to be afforded to development plan policies which have a 'restricting' impact on the supply of housing is a matter for the decision maker [66] and [83]. The findings of Inspector Gould at Portchester are such an example (**SB14**).

Conclusion

7.17 Set out above is the Council's considered correct approach to determining this appeal. The Council cannot currently demonstrate a five year supply of housing land (it's current position being that it is able to demonstrate 4.2 years of such). With that in mind the so called 'titled balance' of the second limb of NPPF Paragraph 11(d) would only be engaged if the Inspector found there to be no harm at all to designated heritage assets and then only once an Appropriate Assessment has been carried out and concluded that there would be no adverse effects on the integrity of habitats sites. Until that point, in line with Section 38(6) of the 2004 Act, the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.

8.0 The Local Planning Authority's case

8.1 The following section of this statement sets out the putative reasons for refusal given by the Council in more detail and considers the appeal proposal against the five criteria of Policy DSP40 which is engaged as a result.

8.2 It is structured as follows:

- Reason for refusal a) - conflict with countryside policies
- Reason for refusal b) - harm to character and appearance, including valued landscape
- Reason for refusal c) - harm to heritage assets
- Reason for refusal d) - loss of best and most versatile agricultural land
- Reasons for refusal e) – g) - impact on European Protected Sites
- Reasons for refusal h) – k) - failure to secure affordable housing provision, education provision and other local infrastructure requirements
- Failure to comply with LPP2 Policy DSP40

Reason for refusal (a) – conflict with countryside policies

8.3 Reason for refusal (a) reads:

“The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside”

8.4 Policy CS2 (Housing Provision) of the adopted Core Strategy states that priority should be given to the reuse of previously developed land within the urban areas. Policy CS6 (The Development Strategy) goes on to say that development will be permitted within the settlement boundaries. The appeal site lies within an area which is outside of the defined urban settlement boundary.

8.5 Policy CS14 of the Core Strategy states that:

“Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agriculture, forestry, horticulture and required infrastructure.”

- 8.6 Policy DSP6 of the Local Plan Part 2: Development Sites and Policies states - there will be a presumption against new residential development outside of the defined urban settlement boundary (as identified on the Policies Map).
- 8.7 The appeal site is clearly outside of the defined urban settlement boundary and the proposal does not comprise one of the acceptable forms of development listed in Policy CS14. The proposal is therefore contrary to Policies CS2, CS6, CS9 and CS14 of the adopted Core Strategy and Policy DSP6 of the adopted Local Plan Part 2: Development Sites and Policies Plan.

Reason for refusal (b) - harm to character and appearance, including valued landscape

- 8.8 Reason for refusal (b) reads:

“The application site lies outside of the defined urban settlement boundary on land which is considered to form part of a valued landscape. As a result the proposed development would result in a range of significant adverse landscape and visual effects, harmful to the landscape character, appearance and function of the countryside and failing to respect or respond positively to the key characteristics of the surrounding area”

- 8.9 It has been established at the previous appeal determined in April 2019 that the site all forms part of the same Lower Meon Valley landscape, and that this landscape is a ‘valued landscape’ in terms of the NPPF paragraph 170.
- 8.10 NPPF paragraph 170 places a greater importance on the protection of valued landscapes. It advises that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes.
- 8.11 At paragraph 28 of the previous appeal decision (**SB1**), Inspector Stone notes as follows:

“From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.”

- 8.12 More recently, a study by Hampshire County Council to be used as part of the evidence base for the emerging Fareham Local Plan 2037 was published in September 2020. The Technical Review of Areas of Special Landscape Quality and Strategic Gaps supporting document (**FBC7**) identifies the Meon Valley as an Area of Special Landscape Quality (ASLQ) (pages 66 – 68). It says:

“The area has high scenic quality and topographic and visual unity, particularly in the lower reaches where the valley is at its widest, with open floodplain pasture and gently sloping sides. It is in good condition and has a generally unspoilt rural character with a coherent and intact valley landform. The historic village of Titchfield lies within the valley on the west side of the river. At the southern end there are good open views from the PRow network, and views into the valley from Cliff Road. Further upstream, the valley is more wooded and enclosed, and views are restricted...”

“The river valley landscape has clearly demonstrable physical attributes and this part of it is an integral part of the wider ‘valued landscape’ of the Meon Valley, extending outside the Borough. It is a very distinctive area and can be considered ‘out of the ordinary’.”

- 8.13 An advice note has been prepared by LDA Design in response to the original planning application (**FBC6**). Philip Brashaw of LDA Design appeared as an expert witness at the previous inquiry at this site. There is no particular need to repeat the advice note in full in this statement however the Inspector is politely requested to take the comments made fully into account, including the review of the Appellant’s LVIA at paragraphs 3.11 – 3.34. The following paragraphs set out the main points on this issue drawing on the advice from LDA Design.

- 8.14 In relation to the landscape effects of the appeal proposal identified in the appellant’s LVIA, LDA Design note the following (paragraph 3.2.1):

“Sections 4.3.3, 4.4, 4.5.1. The LVIA incorrectly assesses a different landscape character and value, susceptibility and sensitivity between the area proposed for housing development and the rest of the valley, based on the relative influence of the existing urban edge. This enables the LVIA to conclude that adverse landscape effects would be lower than would actually occur.”

- 8.15 It continues (paragraph 3.2.4):

“At the appeal, LDA Design (FBC’s landscape witness), made it clear that subdividing the site for the purpose of assessment, and applying a lower value to the area proposed for housing, is a flawed approach, and that the whole site

should be assessed as part of the valley of which it is an integral part. FBC's landscape witness provided evidence on this from previous Inspectors reports and a High Court judgement. There are no features on the ground or strong differences in landscape character that warrant a change in the assessment of landscape value between the area proposed for development and the rest of the valley. The whole of the valley is of equal value (i.e. local authority value), and should not be artificially sub-divided as has been applied within the LVIA."

8.16 And then:

"By incorrectly dividing the field for the purpose of assessing landscape value and applying a lower value, susceptibility and sensitivity to the area proposed for housing the LVIA leads to a lower assessment of adverse effects on landscape character and the valued landscape of the Lower Meon Valley than would actually occur."

8.17 Applying their own assessment, LDA Design comment as follows in relation to landscape effects (paragraphs 3.2.11 – 3.2.12):

"It was established at the appeal that the Lower Meon Valley is of high/medium sensitivity, and the LVIA concurs with this (section 4.5.3). The application site should not be separated from this and given a lower sensitivity rating as demonstrated by FBC's landscape evidence and supported by the conclusions of the Inspector at the appeal, as has been applied within the LVIA.

The proposed development would change part of the pastoral field within the Lower Meon Valley to housing development, causing permanent harm to the character of the valley. Effects within the area proposed for development would be of at large scale and major-moderate adverse significance. These effects would be permanent. Harm would also occur outside the area proposed for development as new housing would extend into the valley and along the skyline of the of the valley side, increasing urban intrusion into the valued landscape. Mitigation planting would take a number of years before it begins to soften the housing, but part of the valued landscape would be permanently lost, and there would be permanent harm."

8.18 Moving on to visual effects, LDA Design comment (paragraphs 3.3.2 – 3.3.4):

"The LVIA states that for many viewpoints the nature of visual effects would change once the proposed new planting has established. However, views from the south and east of the site would clearly see the new homes for many years,

extending housing into the valley, as planting would take a number of years to mature.

The LVIA states, once the proposed new woodland planting has reached semi-maturity both the new homes and the existing settlement edge would be screened, resulting in a positive change to views. The LVIA does not present any sections or visualisations to enable effects on views from the Lower Meon Valley to be tested accurately.

The proposed planting along the eastern edge of the existing housing in Titchfield (north-east of the area proposed for development) would result in a positive change to views of this urban edge in the long term. The proposed planting along the southern and eastern edge of the proposed housing would help to filter views of it in the long term and provide a softer edge than currently exists along the southern edge of Titchfield. However, in the medium term (or potentially longer) the new urban edge would be clearly visible. It is likely that new houses would be visible on the skyline above proposed planting for many years if not permanently.”

- 8.19 The proposed development would replace part of the sloping pastoral valley side of the Lower Meon Valley with housing development. The current appeal proposal would not cause as much harm as the previous appeal proposal would have, mainly because it covers a smaller area and would not extend as far into the valley. However, it would still change part of the open pastoral field which is an integral part of the valued landscape of the Lower Meon Valley to housing development causing permanent, irreversible harm. It would cause adverse effects on views from the Lower Meon Valley for many years. The proposed development would make it harder to understand that Great Posbrook was originally a separate farmstead as the built form of Titchfield extends towards it as a consequence of the development.
- 8.20 In summary, the proposal would result in a range of adverse landscape and visual effects. It is contrary to Policy CS14 in that it would permanently adversely affect the landscape character and appearance of this valued landscape of the Lower Meon Valley. At the same time it would fail to accord with the requirements of Policy CS17 in that it would not respect or respond positively to the key characteristics of the surrounding area. Furthermore, it would fail to satisfy point three of Policy DSP40.

Reason for refusal (c) - harm to heritage assets

- 8.21 Reason for refusal (c) reads:

“The proposal would result in less than substantial harm to, and fail to preserve and enhance, the setting of nearby Grade II Listed Buildings”*

8.22 A Heritage Assessment has been produced by Lucy Markham of Montagu Evans (**FBC8**). Ms Markham previously appeared as a witness at the inquiry for the previous dismissed appeal and is familiar with the site and the heritage assets in question. In preparation for the inquiry Ms Markham visited the site including gaining access to the interior of both listed buildings in order to carry out her analysis.

8.23 The following is an extract from Ms Markham’s assessment of the current appeal proposals (emphasis added):

“There is a significant reduction in the quantum of dwellings in the Application scheme, in comparison with the previous scheme (it is 38% of the [previous] Appeal scheme), so that housing is now only proposed to the north of Great Posbrook and not to the east.

There is currently a gap of between c. 62m and 88m between the southern edge of Titchfield (including the Bellfield Play Area) and Great Posbrook. The Illustrative Site Plan indicates that there would a gap of between c. 28.5m and 33m between the back fences of the proposed dwellings and the fence around the northern perimeter of Great Posbrook. I appreciate that this is illustrative given it is an application for outline planning permission; however, this gap could be controlled at Reserved Matters stage.

The proposed housing would be accessed from Posbrook Lane. The Illustrative Site Plan indicates a spine road broadly east-west, which loops to the north along the northern boundary, with a north-south street to the west along the Posbrook Lane frontage, forming a loose perimeter block, and a further north-south street to the west. The housing is generally arranged so that the rear gardens face the boundary of the Site, including the south, with the exception of the frontages to the playground and Posbrook Lane, where the rear gardens are enclosed by the perimeter block.

Landscape screening is proposed along the south and west boundaries, with a depth of c. 7m to the south indicated on the Illustrative Site Plan. I understand that more extensive woodland was proposed to the south, to entirely fill the gap between Great Posbrook and the proposed development. The Heritage Statement explains that the proposed planting was reduced as a result of Pre-Application discussions with Historic England, who apparently considered that

less planting would retain views of the Meon valley from Posbrook Lane. I agree that it is preferable that this remaining gap is not filled with woodland, to retain a sense of open land and the perception of a break in development when travelling between Titchfield and Great Posbrook along the road or PROW.

In the short to medium term the proposed housing to the east of the Site would be visible in conjunction with the listed farmhouse and barn in distant views from the PROW to the south, and would bring the built form of Titchfield closer to the listed buildings. Once established, there is potential that the landscape screening would improve the distant views of the southern edge of Titchfield which can be seen in conjunction with the listed farmhouse and barn from the PROW to the south, subject to further testing. The land to the east of the farmstead would be remain open in these views, so I do not think the landscape screening would detrimentally enclose the historic farmstead or listed buildings.

The proposed development would bring built form closer to the listed buildings and reduce the gap between Titchfield and Great Posbrook. The historic farmstead would not be entirely subsumed by Titchfield; the two settlements would remain separated by gap of a minimum of c. 28.5m. This is a relatively narrow gap, and the proposed development would urbanise part of the rural hinterland of the listed buildings. As a result it would it make it harder to understand that Great Posbrook was originally a separate farmstead, surrounded by open farmland, and harm the appreciation of the significance of the listed farmhouse and barn as being part of an ancient farmstead.

Nevertheless the degree of harm has been reduced by retaining a gap between the settlements and removing the proposed housing to the east of the farmstead. I therefore conclude that the proposed development would cause less than substantial harm to the listed farmhouse and barn, at the lower end of the spectrum.”

8.24 Ms Markham’s assessment is in alignment with the consultation response received from Historic England on 12th December 2019 (**FBC9**). In their response Historic England comment as follows:

“The development would see the urban edge of Titchfield encroach closer to the boundary of this historic farmstead, but to a much reduced extent. In our view this will change the setting of the farmstead. Most notably the medium distance views of the northern boundary of the farmstead when travelling south out from Titchfield will be lost, visually altering the setting of the farmstead by reducing the rural context it sits within.

As Historic England's setting guidance and the NPPG make clear, the historic connection between places, the kinetic experience of approaching a place and factors such as noise and illumination can often contribute to the impact on the setting of a listed asset. This development would bring the suburbs closer to the farmstead, closing the gap to the north, and will be both partly visible and appreciable (for example, through noise) on the approach road and paths around the farmstead."

8.25 They continue (emphasis added):

"We support the overarching approach to the landscaping (subject to details), with the introduction of tree screening along the southern edge of the development to act as mitigation in softening the development's impact in wider views. Additionally, we welcome the retention of a buffer of open land between the southern boundary of the proposed development and northern boundary of Great Posbrook Farm, which would be kept free from any development. This further assists in mitigating the development's potential impact, allowing the farmstead to continue to be read as a distinct and separate feature, whilst maintaining a greater degree of its agricultural and rural context.

8.26 It is worth pausing here to note that both Ms Markham and Historic England consider the narrow gap/buffer between the edge of the development and the farmstead settlement to be important in keeping the gap clear in order to retain the sense of open land and the perception of a break between settlements. The red edge of the appeal site includes this land right up to the southern boundary with Great Posbrook farmstead (**SB4**). For a scheme of over fifty dwellings, public open space will need to be provided to accord with the requirements set out in Local Plan Part 1 Policy CS21 and the Council's adopted Planning Obligations SPD (**FBC10** – table 4, page 31). The proposed number of units would also require the provision of a Locally Equipped Area of Play (LEAP) (table 6, page 32). The illustrative site plan (**SB5**), whilst showing the location of the 57 proposed dwellings, drainage features and BCA, does not show where public open space would be located leaving the prospect that, in order to meet this infrastructure requirement, the developer may seek to locate the public open space in the buffer. Indeed, the illustrative site plan appears to indicate that public footpath 39, which would need diverting to make way for the houses, would be rerouted along the southern boundary of Great Posbrook implying this land would at least in part be publicly accessible if not used as public open space. The Appellants intentions with regards public open space provision are not clear from the submitted materials and neither Ms Markham nor Historic England have based their comments on the possibility the buffer may be used in this way.

8.27 Returning to Historic England's consultation comments, they continue by saying:

"Taking the above considerations into account, it [is] our view the proposals would cause a minor degree of harm to the setting of the listed buildings, which in terms of the NPPF would fall well within the less than substantial level of harm. We would note that any further encroachment on the historic farmstead's rural setting would likely warrant a greater degree of harm than has been currently identified. NPPF paragraph 196 advises that 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.

Heritage assets are an irreplaceable resource and the approach set out in the NPPF (para 190) requires local planning authorities to take account of the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting) to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. When considering the impact of a proposal the local planning authority should give great weight to the assets' conservation and the more important the asset the greater the weight should be (NPPF para 193). Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (NPPF para 194)."

8.28 The consultation concludes that Historic England have no objection to the proposals on heritage grounds. They finish by reminding the reader of the statutory duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which places a statutory duty on the local planning authority to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

8.29 It is not clear why, having agreed with Ms Markham that the proposals will lead to less than substantial harm to the heritage assets, they raise no objection to the application. It is acknowledged that the degree of harm to the setting of the farmstead and listed buildings has been reduced since the earlier planning appeal, by retaining a gap between the housing development which extends Titchfield Village southwards and the farmstead, and by removing the proposed housing to the east of the farmstead. However, NPPF paragraph 196 advises

that 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. Historic England quote paragraph 196 in their consultation response but do not offer any opinion on where the balance lies in this instance, presumably because they consider (correctly) that it is for the LPA to do so as the decision maker rather than the statutory consultee. The response also repeats the advice at NPPF paragraphs 190, 193 & 194 without further comment on whether they consider the scheme to comply with those. The conclusion of no objection is therefore confusing as it gives the impression of there being no harm arising which, by Historic England's very admission, is not the case.

- 8.30 Ms Markham's advice is clear that less than substantial harm at the lower end of the spectrum would occur.
- 8.31 Policy DSP5 of the adopted local plan states that *"In considering the impact of proposals that affect the Borough's designated heritage assets, the Council will give great weight to their conservation... Harm or loss will require clear and convincing justification in accordance with national guidance."* It continues that *"Listed buildings will be conserved by... ensuring that development does not harm, and if desirable, enhances their settings."*
- 8.32 The appeal development is clearly contrary to Policy DSP5 in that it would result in less than substantial harm to, and fail to preserve and enhance, the setting of nearby Grade II* Listed Buildings.
- 8.33 How the harm identified to heritage assets should be treated when assessing it against the policies of the NPPF is set out earlier in this statement at paragraphs 7.11 – 7.15. As explained, the desirability of preserving or enhancing listed buildings (which requires special regard under S66 of the PLBCA 1990) should be afforded considerable importance and weight. Harm to the setting of these Grade II* Listed Buildings generates a strong presumption against granting planning permission. The Council does not consider the mooted public benefits of the proposal are powerful enough to outweigh this harm having regard to the status and significance of the heritage assets and notwithstanding the less than substantial level of harm found. This view is consistent with the findings of Inspector Stone in relation to the previous appeal where at paragraph 64 he said:

"... I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant

public benefits of the scheme. On this basis I conclude that the scheme should be resisted.”

- 8.34 In comparison to the previous dismissed appeal proposal, whilst the harm to the heritage assets may be less in the current appeal proposal, so too are the benefits.

Reason for refusal (d) - loss of best and most versatile agricultural land

- 8.35 Reason for refusal (d) reads:

“The proposal would result in the loss of best and most versatile agricultural land”

- 8.36 Local Plan Part 1 Policy CS16 seeks to prevent the loss of the best and most versatile agricultural land. The NPPF (paragraph 170(b)) recognises the economic and other benefits of the best and most versatile agricultural land.

- 8.37 The appeal site contains some Grade 3a, i.e. best and most versatile (BMV) agricultural land. The proposal would therefore be contrary to Policy CS16 and the permanent loss of BMV agricultural land weighs against granting planning permission in the balance of issues. However, on this point when dealing with the previous appeal Inspector Stone agreed that given the grade of land (not Grade 1 or 2), the small scale and the overall comparative effect on such land in Fareham, whilst the loss of agricultural land is negative it should be afforded only limited weight in the overall planning balance. The Council concur with this view.

Reasons for refusal (e - g) – impact on European Protected Sites

- 8.38 Reason for refusal (e) reads:

“In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance”

- 8.39 Reason for refusal (f) reads:

“In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of

European Protected Sites which would arise as a result of the loss of part of a Primary Support Area for Brent geese and waders”

8.40 Reason for refusal (g) reads:

“In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the additional generation of nutrients entering the water environment”

8.41 Core Strategy Policy CS4 sets out the strategic approach to Biodiversity in respect of sensitive European sites and mitigation impacts on air quality. Policy DSP13: Nature Conservation of the Local Plan Part 2 confirms the requirement to ensure that designated sites, sites of nature conservation value, protected and priority species populations and associated habitats are protected and where appropriate enhanced.

8.42 The Solent is internationally important for its wildlife. Each winter, it hosts over 90,000 waders and wildfowl including 10 per cent of the global population of Brent geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within the Solent which are of both national and international importance.

8.43 In light of their importance, areas within the Solent have been specially designated under UK/ European law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). These are often referred to as ‘European Protected Sites’ (EPS).

8.44 Regulation 63 of the Habitats and Species Regulations 2017 (‘the habitat regulations’) provides that planning permission can only be granted by a ‘competent authority’ if it can be shown that the proposed development will either not have a likely significant effect on designated EPS or, if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated EPS. This is the Habitat Regulations Assessment (HRA) process, of which Appropriate Assessment is a part. The competent authority is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations. The competent authority in determining this appeal is the Planning Inspector. It is noted that the appellant has submitted a ‘shadow’ HRA

to assist the Inspector in carrying discharging their duties under the habitat regulations (**SB9**).

- 8.45 When considering the appeal development there are three main likely significant effects on EPS.
- 8.46 The first of these effects (reason for refusal f) is the loss of part of a Primary Support Area (F48B) for waders and brent geese, qualifying features of the EPS, as identified in the Solent Waders and Brent Goose Strategy (SWBGS) (Policy DSP14 of the Local Plan Part 2 relates). The appellant has proposed an area of adjacent land to the east of the appeal site (part of the blue edged land) as a Bird Conservation Area (BCA). Outline proposals have been provided as to how the BCA would be set out, managed and maintained. It is also stated by the applicant that the Hampshire & Isle of Wight Wildlife Trust (HIWWT) have agreed to take on the BCA and manage it in perpetuity. Natural England have raised no objection to the proposals in principle.
- 8.47 The second likely significant effect on EPS (reason for refusal g) relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) will have a likely significant effect upon the EPS.
- 8.48 Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites. Natural England have provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best-available scientific evidence and research, however for each input there is a degree of uncertainty. Natural England advise local planning authorities to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.
- 8.49 During the course of the application being considered the appellant submitted a nutrient budget for the development. Whilst that budget shows the development would result in a reduction in the amount of nitrogen reaching the water environment, the budget has been calculated for the appeal site plus the adjacent blue-edged land. Taken by itself the development would not be nutrient neutral and so would rely on this adjacent land being taken out of its current use for grazing.

8.50 The third of these likely significant effects (reason for refusal e) on EPS concerns recreational disturbance on the Solent coastline through an increase in population. Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution to the Solent Recreation Mitigation Strategy (SRMS).

8.51 The Council acknowledges that these three reasons for refusal may be addressed through suitable planning obligations. Included in the Officer's committee report (**SB6**) is a note for information which states:

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

8.52 Notwithstanding, it is concerning that to date no draft unilateral undertaking has been received to address these either these three habitat regulations matters or for that matter any of the other points in reasons for refusal h) – k). The Council has therefore not been given the opportunity to scrutinise the mitigation measures proposed. The means of mitigating recreational disturbance (reason for refusal e) are well established and the appellant would simply need to provide an undertaking for contributions towards the SRMS. It remains unclear though how the development will achieve nutrient neutrality (reason g) or how the BCA and its management would be secured over the lifetime of the development (reason f).

Reasons for refusal (h – k) - failure to secure affordable housing provision, education provision and other local infrastructure requirements

8.53 Reason for refusal (h) reads:

“In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met”

8.54 Reason for refusal (i) reads:

“In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan”

8.55 Reason for refusal (j) reads:

“In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met”

8.56 Reason for refusal (k) reads:

“In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.”

8.57 As referred to above, no unilateral undertaking has been received from the appellant. It is unclear what provisions will be made in relation to the open space (reason for refusal h), affordable housing (reason i), education (j) or improvements to the local public rights of way network (reason k). The following paragraphs set out in turn the general expectations in respect to each of these matters.

8.58 Open space provision will need to accord with the requirements set out in Local Plan Part 1 Policy CS21 and the Council’s adopted Planning Obligations SPD (**FBC10**). The proposed number of units would require the provision of a Locally Equipped Area of Plan (LEAP). The illustrative site plan does not include any provision for public open space on the appeal site. There is however an indication that land within the applicant’s control to the south of the site may be provided as public open space although no further details are available. As raised earlier in this statement, there are concerns over the likely effects of public open space and play equipment on the setting of the Grade II* Listed Buildings at Great Posbrook.

8.59 To comply with the requirements of Local Plan Part 1 Policy CS18, the appeal development must include the provision of 40% affordable housing comprising a blend of affordable tenures. Subject to appropriate size, mix and tenure being agreed to meet the identified local need, the Council considers this could be appropriately secured in a unilateral undertaking.

8.60 It is anticipated that a suitable financial contribution towards education provision in the local area would address reason for refusal j.

8.61 Similarly, it is anticipated that, like the effect of the previous appeal scheme, the adverse effects from the current appeal proposal on local public rights of way could be addressed through suitable alternative or diverted routes being proposed and a financial contribution towards improvements to the wider network in the local area being provided by the appellant.

8.62 It is assumed that the appellant wishes to submit a unilateral undertaking prior to the hearing for the Council to consider and dialogue would soon begin on the content of developer obligations. It is therefore anticipated that the above issues may be resolved beforehand with at the very least both parties being able to update the Inspector on their respective positions at the hearing.

Failure to comply with LPP2 Policy DSP40

8.63 Policy DSP40: Housing Allocations, of Local Plan Part 2, states that:

"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".*

8.64 The Council considers the appeal proposal to comply with parts i), ii) & iv). There is conflict with parts iii) & v).

8.65 Each of these five bullet points are worked through in turn below:

Policy DSP40 (i)

- 8.66 The proposal for up to 57 dwellings is relative in scale to the 5YHLS shortfall and therefore bullet i) of Policy DSP40 is satisfied.

Policy DSP40 (ii)

- 8.67 The northern site boundary immediately abuts the rear gardens of dwellings within the existing adjacent urban area as well as the public open space and play area on the south side of the Bellfield estate. The overall extent of the housing development would be confined to an area all within a close distance of the urban boundary. With this in mind it is considered that the development would be well related to and well integrated with the neighbouring settlement.

- 8.68 The site is comparatively well located to the services and facilities located within Titchfield village centre as well as the nearest bus stops on Coach Hill being a relatively short distance away.

- 8.69 It is considered that the second point of Policy DSP40 is satisfied.

Policy DSP40 (iii)

- 8.70 The proposal fails to satisfy point three of Policy DSP40. As set out at paragraphs 8.8 – 8.20 and in the assessment by LDA Design (**FBC6**), whilst the effect on the strategic gap would not be significant there would be permanent harm caused to the character of the Lower Meon Valley. The effects on the landscape would be at large scale and of major-moderate adverse significance. These adverse landscape and visual impacts on the countryside and this valued landscape would not be minimised.

Policy DSP40 (iv)

- 8.71 There is no reason to suggest that the proposed 57 houses could not be delivered within the short term. The proposal would therefore be in accordance with point iv of policy DSP40.

Policy DSP40 (v)

- 8.72 The final test of Policy DSP40 requires that the proposal does not have any unacceptable environmental, amenity or traffic implications. These issues are considered in turn below. In summary however, there are unacceptable environmental impacts arising from the development which mean the proposal fails to accord with DSP40(v).

Environmental

- 8.73 The impact of the development on European protected sites has been set out earlier in this statement. There are three main adverse effects on the integrity of EPS contrary to Policies CS4, DSP13, DSP14 & DSP15 of the adopted local plan.
- 8.74 As explained earlier in this statement, the proposal would lead to the loss of B&MV agricultural land contrary to Policy CS16.
- 8.75 Also, as set out above, the proposal would lead to less than substantial harm to the setting of Grade II* Listed Buildings contrary to Policy DSP5.

Amenity

- 8.76 The appeal proposal is in outline meaning the layout of the site and therefore relationship and distance between dwellings is yet to be proposed. Consideration of the likely impact on light to, outlook from and privacy enjoyed by neighbouring dwellings is a reserved matter for a subsequent stage of the planning process.
- 8.77 There are no adjacent land uses which would be likely to materially affect the living conditions of future residents, for example by way of noise or odour.

Highways

- 8.78 The Highway Authority Hampshire County Council have raised no objection to the application after further information was provided by the applicant to satisfy various outstanding matters.

9.0 Planning balance and conclusions

- 9.1 The proper approach to determining this appeal is set out at Section 7 of this statement.
- 9.2 The Council cannot currently demonstrate a 5YHLS and this is a material consideration in the determination of this appeal.
- 9.3 Paragraph 11(d) of the NPPF would only be engaged if the Inspector found there to be no harm at all to the setting of the Grade II* Listed Buildings at Great Posbrook. The Inspector is however, respectfully requested to agree with the Council's view that the proposal will result in less than substantial harm to those heritage assets.
- 9.4 Even then, the so called 'tilted balance' would be disapplied unless the Inspector, in their capacity as the competent authority for habitat regulations purposes, had carried out an Appropriate Assessment concluding no adverse effects on the integrity of habitats sites. It has been identified that the appeal proposal would have likely significant effects upon the Solent and Southampton Water Special Protection Area, a Ramsar site, Solent Maritime Special Area of Conservation and that the site is a component of the Solent Wader and Brent Goose network. The Council are of the view that the Inspector does not currently have sufficient detail on mitigation from the Appellant to conclude no adverse effects would remain (see paragraph 8.52 of this statement).
- 9.5 If the Inspector finds harm to the designated heritage assets or an Appropriate Assessment is not positively conclusive, the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise as set out in the Section 38(6) test (a 'straight balance').
- 9.6 The site is outside of the defined urban settlement boundary and the proposal does not relate to agriculture, forestry, horticulture and required infrastructure. The principle of the proposed development of the site would be contrary to Policies CS2, CS6 and CS14 of the Core Strategy and Policy DSP6 of Local Plan Part 2: Development Sites and Policies Plan.
- 9.7 The proposals have been carefully assessed against Policy DSP40: Housing Allocations which is engaged as this Council cannot demonstrate a 5YHLS. Regard has also been had to the Council's 5YHLS position (**FBC3**) and the Government steer in respect of housing delivery.
- 9.8 In weighing up the material considerations and conflict between policies; the

development of a greenfield site weighted against Policy DSP40, it is considered that the proposal satisfies three of the five policy tests (points i), ii) and iv).

- 9.9 With regards to Policy DSP40(iii), Officers consider the proposals would have harmful visual effects and landscape effects which would be at large scale and of major-moderate adverse significance. There would be permanent harm caused to the character of the valued landscape of the Lower Meon Valley the impacts of which would not be minimised. The proposal therefore fails to satisfy this policy test and is also considered contrary to Policies CS14 & CS17 as a result of the harm identified to the landscape character and appearance of the countryside.
- 9.10 Officers also consider that the proposal would be contrary to Policy DSP40(v) as it would result in adverse effects on European Protected Sites (contrary to Policies CS4, DSP13, DSP14 & DSP15), would result in the loss of BMV agricultural land (contrary to Policy CS16) and would harm the setting of Grade II* Listed Buildings when applying the statutory test under Section 66 of the PLBCA Act 1990. NPPF paragraph 196 advises that such harm should be weighed against the public benefits of the proposal. Whilst the harm identified is less than substantial, and at the lower end of the spectrum, the heritage assets are of a high grade (Grade II*) and great weight should be given to the conservation of these assets. The harm to the heritage assets would not be outweighed by any public benefits. It follows therefore that the proposal is also contrary to Policy DSP5.
- 9.11 As set out in Section 6 of this statement, whilst full weight cannot be afforded to the development plan policies in the context of a lack of 5YHLS substantial, determinative, weight can still be afforded to them. This is with the exception of Policy DSP40 which must be afforded full weight and any conflict with it the greatest weight.
- 9.12 In balancing the objectives of adopted policy which seeks to restrict development within the countryside alongside the shortage in housing supply, the Council acknowledges that the proposal could deliver up to 57 dwellings in the short term. The contribution the proposed scheme would make towards boosting the Borough's housing supply is a substantial material consideration, in the light of this Council's current 5YHLS shortfall. In addition, the proposals include the provision of forty percent affordable housing. Added to this is the modest benefit of the additional jobs and expenditure in the locality arising from construction activity and the completed development itself. Other benefits purported by the applicant, such as the creation of the Bird Conservation Area and new public footpaths, are in reality mitigation measures which offset the harm arising in various matters.
- 9.13 The Council has carefully weighed the benefits which would be delivered by the

proposals, having regard for the Council's 5YHLS position against the conflict with adopted local plan policies and the policies of the NPPF, and the combination of the harm to landscape character and the setting of listed buildings. The Council considers the harm identified outweighs the benefits arising from the scheme.

- 9.14 In light of this assessment, and taking into account all other material planning considerations, planning permission should not be granted and the appeal should be dismissed.
- 9.15 As made clear above, this balancing exercise has been made under Section 38(6) of the 2004 Act as set out above. However if the Inspector were to find no harm at all to the designated heritage assets and the likely significant effects of the development on habitats sites had been addressed and an Appropriate Assessment had concluded no adverse effects on the integrity of the habitats sites, the presumption in favour of sustainable development, as set out in NPPF paragraph 11, would apply. If that were the case and the 'tilted balance' at 11(d) were engaged, then Officers consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.
- 9.16 The Inspector is respectfully invited to reach the same conclusions and dismiss the appeal.