

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

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

**CLOSING SUBMISSIONS
ON BEHALF OF
THE APPELLANTS**

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 The site lies outside but immediately adjacent to the out of date adopted settlement boundary in what is recognised as a sustainable location for residential development.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is in dispute) and that footnote 8 and para 11(d) of the NPPF are engaged so as to render the 'most important policies' out of date.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

- (a) Impact on the conservation interest of the Solent SPA, specifically Brent Geese;
- (b) Impact on the conservation interest of the site, specifically in relation to bats, dormice and badgers;
- (c) Displacement of parking on adjacent roads resulting in a highway safety and an ‘amenity’ objection;

In addition, the loss of best and most versatile agricultural land is objected to, although this is acknowledged not, on its own, to justify the withholding of permission.

4. In the light of the above, at the start of the inquiry, the Inspector identified the following Main Issues:
- (i) The effect on on-street parking and highway safety;
 - (ii) The effect on European sites of nature conservation;
 - (iii) The effect on on-site biodiversity;
 - (iv) The principle of development outside the adopted settlement boundaries, and the extent of compliance with policy DSP40;
 - (v) The overall planning balance (including loss of best and most versatile agricultural land, and the absence of a 5 year housing land supply).
5. Before turning to those, however, it is helpful to set out the agreed approach to decision-taking, in the context of s.38(6) of the P&CPA 2004, the development plan and national policy.

The correct approach to decision-taking:

6. The correct approach to decision-taking is agreed in this case between the parties. It has recently been rehearsed in front of and adopted by two inspectors in appeals in Fareham (Newgate Lane N/S¹ and Newgate Lane E²), is set out in the Planning Statement of Common and both planning proofs of evidence. It is as follows:

¹ CD J.4

² ID 13

7. The starting point is s.38(6) and the presumption in favour of the development plan, subject to material considerations. Important material considerations in this case include national policy in the NPPF, the extent to which the development plan is up to date, and the ability of the Council to demonstrate the required 5 year housing land supply.
8. The development plan must be read ‘as a whole’ and compliance with it is to be taken ‘as a whole’, in accordance with settled caselaw³.
9. In this case, the adopted development plan is the Local Plan Part 1 (‘the CS’) and Local Plan Part 2 (‘the DSP’). Policy CS2 sets out a housing provision which is sought to be met by policy CS6 and the DSP; policies CS14 and DSP6 restrict development outside settlement boundaries and allocations in the DSP.
10. However, as CS2 is rooted ultimately in the now abolished South East Plan, the development plan strategy is not and does not purport to be based on an NPPF-compliant assessment of development needs. As such the housing requirement in CS2 is agreed to be out of date and the settlement boundaries to which CS14 and DSP6 are also agreed to be out of date and the weight of any conflict with them is agreed to be reduced accordingly, in line with the Supreme Court in *Hopkins Homes* at para. 64.
11. Further, and in addition, it is agreed that the Council cannot demonstrate the required 5 year housing land supply and footnote 8 and para 11(d) of the NPPF is engaged such that ‘the most important policies’ (which include CS2, CS6, CS14 and DSP6) are deemed out of date such that any breach of them may be accorded reduced weight and (subject to HRA issues) the ‘tilted balance’ is to be applied.
12. In addition, in this development plan, the absence of a 5 year housing land supply engages the contingency policy, DSP40, which it is agreed operates as an exception to the otherwise restrictive policies, subject to its own five criteria. It is agreed that these five criteria set tests less restrictive than the policies to which it acts as an exception. It has been observed by both recent inspectors that, given the continued inability of the Council to be able to demonstrate the required 5 year housing land supply, they

³ Sullivan J in *R v Rochdale MBC (ex parte Tew)*

may be still too restrictive (or are being applied to restrictively). Further, it is agreed that DSP40 is itself a ‘most important’ policy and, so, is subject to the deeming provision in para. 11(d), such that it is itself ‘out of date’ and breach of any of its criteria may be reduced in weight accordingly in the planning balance.

13. Lastly, as agreed by Mr Sennitt in cross-examination, if there is compliance with all five criteria of DSP40, the development is in accordance with the development plan taken as a whole, and para. 11(c) of the NPPF is engaged as well as the presumption in s.38(6); conversely, it is agreed that if there is breach of DSP40, para. 11(d)(ii) is engaged⁴ and the breach must be considered through the prism of the ‘titled balance’ such that permission should be granted unless the harms ‘significantly and demonstrably’ outweigh the benefits.
14. In this context, it is notable that the Council only alleges breach of DSP40(v). It accepts the locational suitability of the site under DSP40(ii) and (iii), its scale under (i) and its deliverability under (iv). Within DSP40(v), this breach is said to arise from unacceptable environmental harm to brent geese [RRef (b)], bats, dormice and badgers [RRef (d)] and loss of best and most versatile agricultural land [RRef (f)]; unacceptable amenity harm by displacing parking [RRef (c)]; and unacceptable impact in terms of highway safety by service vehicles [RRef (c)].
15. Outside the development plan, the statutory provisions of Reg 63 of the Habitat Regulations and Reg 3 of the EIA Regulations are invoked by the Council under RRef (b) and RRef (d) respectively, such that if the Council is correct in its argument under those Reasons, the Inspector is barred by operation of statute from granting permission.
16. Consequently, for practical purposes it is agreed that the allegation of breach of DSP40(v), and in turn the consideration of any such breach, if found, within the prism of para. 11(d)(ii) will be founded only on parking/servicing and BMV [RRefs (c) and (f)]. Of these, it is acknowledged by the Council that BMV would not, alone, justify refusal of permission even were its loss to be considered in breach of DSP40(v)⁵.

⁴ Subject, as before, to SPA issues under 11(d)(i)

⁵ Which, of course, the Appellant disputes – see also ID 13 at para. 34

Main Issue 1: parking displacement and highway safety:

17. Beaulieu Avenue and Romsey Avenue are typical suburban streets with approximately 5.5m carriage way widths and unrestricted on-street parking. In order to improve the free flow of traffic, Hampshire County Council, as highways authority, required the provision of parking bays within current verges and two stretches of double yellow lines adjacent to the junction of the access road and Romsey Avenue. The result of the latter is that certain locations on the access road and Romsey Avenue cars that currently park there would be displaced. The highways authority requested a study, to a required methodology [‘the Lambeth survey methodology’] to establish the consequences of parking displacement. It concluded, on the basis of the agreed study that there was no objectionable highways impact.
18. Following vociferous opposition by local residents on the grounds of impact on highway safety and parking conditions (reflected in 231 written objections on that topic), Council members imposed RRef C at the committee meeting, without support from the Highways Authority or its own planning officers. At the time of the committee decision, there was no technical evidence that concluded there was an unacceptable impact arising due to the displacement of on-street parking by the scheme; the study required by HCC had concluded the effect were acceptable. The Highways Authority had also concluded that in all other aspects the scheme was acceptable in terms of both highway safety and the operation of the highway network. It left questions of ‘amenity’ to the Council.
19. Accordingly, the Council alleged that the displacement of parking would have an unacceptable ‘amenity’ impact, but it also went on to allege an unacceptable highways safety impact [RRef C].
20. Subsequent to the appeal being lodged, the Council sought to assemble evidence to support its RRef C. It instructed Mayer Brown to undertake a Parking Displacement Study. On the basis of this study, Mr Philpot of Mayer Brown, on behalf of the Council, alleged two impacts: (1) an amenity objection arising from the

‘inconvenience’ of a certain number cars potentially being displaced; and (2) a highways safety objection based on movements of service vehicles.

21. The evidence of Mr Philpot is disputed by the Appellant through Mr Wiseman.
22. As regards parking displacement, Mr Philpot sought to generate ‘Scenario 2’ and ‘Scenario 3’ not by reference to different surveys (he had done none) but from Google photos and those derived from third party objections. Of the Google photos, the two most recent support Mr Wiseman’s survey results, so Scenario 2 was derived entirely on one photo from 2009 – since when, Mr Wiseman noted, more off-street parking had become available. Of the third party objector photos underpinning Scenario 3, Mr Wiseman stated that they do not reflect his observations before and since their submission. It is not reliable, therefore, to judge the effect of the scheme by either of Mr Philpot’s Scenarios 2 or 3.
23. As regards service vehicles, the geometry of the road network is unchanged by the proposed development and there is no safety record associated with the operation of service vehicles; Mr Philpot acknowledged that the propensity of residents on Romsey Avenue to receive on-street deliveries is unchanged by the development and the ability of those vehicles to stop on double yellow lines would be known to the highways authority, which had concluded that there would be no safety objection to the imposition of yellow lines. Indeed, as Mr Wiseman observed, the removal of on-street parking as a result of the yellow lines would improve the free-flow of service vehicles and highway safety, not hinder it, compared to existing.
24. Thus neither of the points argued by Mr Philpot under RRef C were made out on the evidence, but moreover, for our purposes, orally, Mr Philpot acknowledged that even *at its highest extent* [ie his Scenario 3], his evidence did not justify a finding that there was an ‘*unacceptable*’ highway safety impact, nor a ‘*severe*’ operational impact, and, as such, he acknowledged that there was no breach of para. 111 of the NPPF.
25. This is important because, under cross examination, the planning evidence of Mr Sennitt was that the operative policy DSP40(v) as regards ‘unacceptable...traffic’ impacts was not more stringent than para. 111 of the NPPF. Orally, therefore, he was constrained to accept that the Council’s own highways evidence (at its highest)

demonstrated that the scheme is not contrary to DSP40(v) as regards ‘traffic’ on either highway safety or highway operation.

26. As such, the RRef C allegation of highway safety and highway operation was not, and never had been, supported by the Council’s own evidence (as well as being contradicted by the statutory Highways Authority).
27. With the Scheme’s effects on highway safety and highway operation *not* in breach of policy DSP40(v) ‘traffic’, the Council fell back on the ‘amenity’ limb of RRef C, alleging the potential parking displacement (as quantified in Mr Philpot’s evidence at least) amounted to an ‘unacceptable... amenity’ impact under DSP40(v) and that permission should be refused.
28. As noted above, however, the quantification of the potential displacement by Mr Philpot is disputed by the Appellant. But, again, taking it *at its highest* [ie his Scenario 3], the most that can be said is that there are potentially 11 cars displaced [the 6 counted by Mr Wiseman plus the 5 extra that informs Scenario 3, based on 3rd party objectors’ photographs]. Thus, it is 11 cars which may be said to be ‘inconvenienced’ not 231 households; Mr Wiseman observed that the majority of road-users, by contrast, would find the resultant free-flow of the road more ‘convenient’.
29. Of these, between 2 and 4 might be obliged to park more than 100m⁶ from where they are currently accustomed (and none more than 180m⁷). The rest, ie between 9 and 7 cars, potentially move less than 100m, with, in each Round between 5 and 9 cars actually moving less than 20m - or not moving at all. [See Table 4 of ID14.]
30. In contrast to the 231 evidentially unsupported residents’ objections on this topic, that quantification, by the Council’s own highways expert, cannot reasonably be said to amount to a material, let alone ‘*unacceptable...amenity*’ impact for the purpose of DSP40(v). The ‘amenity’ limb of RefC was, therefore, unsupported on behalf of the Council, *in the light of its own evidence*.

⁶ A figure suggested in xx of Mr Wiseman as some manner of a measure of unacceptability

⁷ Max predicted by Mr Philpot in Scenario 3 is one car, in one Round, at 173.9

31. Further, as noted above, if and insofar as it was reasonable to assert that the Council's quantification of potential parking displacement justified alleging a breach of DSP40(v) on 'amenity', that only leads one to the 'tilted balance' in NPPF para. 11(d)(ii).
32. Given the Council's own evidence as to the significant positive weight to be given to the provision of housing (in the context of a 5 year HLS shortfall), affordable housing (in the context of a significant and worsening delivery of affordable housing) and economic benefits arising from the scheme, it is not reasonable to conclude even the Council's worst case quantification of parking displacement (see para 13 above) amounts to an amenity objection *significantly* more weighty than the sum of those three undisputed social and economic benefits of *significant* positive weight.
33. Regrettably, it appears most likely that Members were swayed by the extent, rather than the objective justification, of third party objection into imposing RRef C. The Council should have abandoned that RRef, at the very least once Mr Philpot's evidence was available. It is not something that justifies refusal.

Main Issue 2: effect on European sites:

34. This issue solely concerns the potential effect on the use of the appeal site by wintering Brent Geese from the nearby SPA. It is not suggested that wader interest on the site is important or would be compromised. The Council asserts that on current evidence, the Inspector cannot conclude an 'appropriate assessment' in respect of the potential impact on Brent Geese favourably to the development – ie that she cannot conclude beyond reasonable scientific doubt that there will not be a likely significant effect on the favourable conservation interest of the SPA Brent Goose population.
35. The Council is wrong in its assertion.
36. The site represents 12.6ha of a 18.9ha parcel of land in the Solent Waders and Brent Geese Strategy 2020⁸ ['SWBGS 2020'] identified as F21. At the time of the LPP2,

⁸ CDH.6

and for the purposes of policy DSP14, F21 was classified as an ‘uncertain’ site. In the SWBGS 2020, it was identified as a ‘Primary Support Area’⁹. These are taken to be ‘important’ sites for the purpose of the tests in Policy DSP14.

37. The classification under the SWBGS 2020 was said to be undertaken on the basis of seven metrics informed by survey effort conducted over three years from 2016 to a specified survey methodology and ‘supplemented’ by other records. The only positive result from that survey was the record of one goose on one occasion in 2017. Against the metrics, that would not justify a designation of Primary Support Area. The designation rests, therefore, on two records of 300 birds on coincidentally the same day in 2012 and 2013, about which no data has been vouchsafed. The workings of the SWBGS steering group against the metrics has similarly not been forthcoming.
38. On the evidence, a designation of Primary Support Area is not justified on the basis of the SWBGS. As such, the test on re-classification requiring 3 years of survey in favourable management is not applicable; the classification is in error in the first place. In addition, farming practices since 2014, and continuing for the foreseeable future, mean that the appeal site is devoid of foraging resource for Brent Geese in the winter period, as it is under plough. Functionally, to geese, therefore, whatever its planning policy status, it is not a winter goose foraging habitat for the SPA interest.
39. However, even if parcel F21 were justifiably designated as a Primary Support Area, the SWBGS Mitigation Guidance¹⁰ supports the appeal proposals at para. 19C. It recognises that development can acceptably take place on Primary Support Areas (and thereby provides the mechanism for discharge of the test for ‘important’ sites in DSP14) depending on the habitat quality and extent of that lost and that provided. One example is the loss of part of a PSA (ie a reduction in its extent), with improvement to the quality of the goose habitat within the retained part.
40. That is what is proposed here: of the 18.9ha F21 not managed for Brent Geese, 8.9ha will go to other uses and 10ha will be retained and available for Brent Geese, including 3.7ha specifically managed to be attractive foraging habitat for them. There will be a qualitative net gain in Brent Goose habitat.

⁹ CDH.8

¹⁰ CDH.7

41. Much debate was had in the inquiry as to the proper baseline against which to 'calibrate', with the Council arguing that 300 birds as said to have been observed in 2012 and 2013 was the appropriate figure to give the Inspector the necessary 'certainty' to pass the tests of European caselaw. However, Mr Whitby's evidence, and the evidence of the sHRA, is precisely that the 3.7ha Bird Conservation Area *alone* can accommodate in excess of 300 geese. That is only part of the 10ha of F21 retained by the proposals. That 3.7ha is expressly managed to be attractive to foraging Brent geese in the winter, with a short, nitrogen-rich grass sward which is their optimum terrestrial feeding habitat, and a significant improvement over either the current bare plough, or the previous arable cropping which took place before 2014 (ie at the time of the 2012/2013 records).
42. Thus, the scheme proposals accord with para. 19C of the Mitigation Guidance, and by extension meet the tests in the second limb of policy DSP14, even assuming (a) that it is correctly designated part of a PSA, and (b) that the correct 'calibration' of goose interest is 300 geese. Even on the Council's approach, then, the Inspector can have the necessary 'certainty' that a likely significant effect can be excluded and the 'appropriate assessment' would therefore be favourable to the grant of permission.
43. A word, finally, about the position of NE in this. Much is made by the Council of their statutory status and the weight to be given to their advice. NE objected to the proposal when first consulted under the DAS system, although it was they who had first suggested a BCA for geese, so the principle does not appear to be in dispute.
44. NE then set out a series of concerns, not over habitat quality, but over site size, cover and sightlines, and proximity to development and associated disturbance. Each numbered objection in the NE DAS response has been responded to with detailed evidence in the sHRA. There is no evidence to counter what is there set out. NE has simply maintained its position of opposition, despite the evidence presented to it. It has not even set out reasons for not accepting the evidence within the sHRA response to its earlier objections. Mr Sibbertt, for the Council, adopts and relies upon NE's continuing objection of 'uncertainty'.

45. The Inspector must look at the evidence before her. The proposed habitat quality is not in question. Comparable sites in terms of proximity to development and in terms of openness have been shown to support wintering Brent Geese. There is no reason why the BCA should not do so, especially, as many of them are amenity grassland rather than the specific habitat targeted at geese foraging here proposed especially as many of those were established as sports pitches with on-going management for sports use, illustrating regular disturbance risks associated with those sites. In comparison, the BCA will be established in a way that optimises its value for Brent Geese and will not be subject to similar recreational disturbance. As to size, smaller or equivalent areas to the 3.7ha BCA have records of significantly higher counts than 300, ranging up to 1200.
46. The hectareage proposed to be managed for geese, therefore, is not a limiting factor; the peripheral conditions are comparable to other sites used by Brent Geese, and the sward is especially attractive to them. If and insofar as Parcel F21 was in the past attractive to up to 300 geese, the Inspector can have the necessary certainty to conclude that it would be equally or more attractive under the proposals before her.
47. An appropriate assessment can, accordingly be undertaken favourably to the development, Reg 63 of the Habitats Regs would not be breached by the grant of permission, para. 182 of the NPPF is not engaged, the 'titled balance' in para. 11(d)(ii) is not excluded and RRef (b) is not made out.

Main Issue 3: effect on on-site ecology:

48. This issue narrowed through the course of the appeal process to two topics: inadequate information to inform the assessment of likely significant effects on bats and dormice; and failure to consider in-combination effects on badgers as a result of the neighbouring Cranleigh Road scheme.
49. It is to be noted that there is no positive assertion of harm to the interests of bats, dormice or badgers; rather it is an assertion of insufficient knowledge at this stage to make a judgement on harm. Both topics are said to engage Reg 3 of the EIA

Regulations in that if the Council's remaining assertions are correct under RRef (d), the Inspector is barred by statute from granting permission.

50. The assertions are not correct, however.

51. First, as regards bats and dormice, the surveys currently on-going are to inform the detail of the scheme at reserve matters/discharge of conditions stage. There is sufficient information at this stage to be able to conclude that there will be a net improvement to the conservation interest of bats and dormice (assuming the latter are present, which current survey work indicates they are not). This is because the only habitats suitable for bats and dormice are round the peripheries of the site, and it is all being maintained and enhanced by the proposals, while additional bat and dormice habitat will be created within the site, where currently there is none. As Mr Day explained, and officers accepted, mitigating the effect of lighting and measures to avoid predation are matters well understood and already catered for in the ecological proposals secured by condition. Bats and dormice (if present) can be concluded to be better served with the appeal proposal than without it. No additional surveys are required; it would not be proportionate in the circumstances to require them. Reg 3 is not breached.

52. Similarly, as regards badgers, there is no need for a formal 'in combination' assessment on the badger clan living in the sets on and adjacent to the site. The arable land is of low foraging suitability. The hedgerow edges, which afford foraging opportunities will not be lost and will be, as above, enhanced and extended by the proposals. The net effect on badgers of the Cranleigh Road scheme was to improve their foraging habitat on that site; the net effect of the appeal proposals will be to improve their foraging habitat on the appeal site. There is no loss of connectivity; indeed the new hedgerow and ditch traversing the site gives a new route currently unavailable to the POS foraging resource which currently does not exist. The badger clan, over all, will experience a positive net gain in habitat. There are no net negatives to 'combine'.

53. The Inspector can be confident that 'on-site' ecology is not a matter which weighs against the scheme. Indeed, it is a matter where there is a significant net benefit with

10.04% gain in habitats and 132.56% gain in hedgerows as a result of the proposals¹¹. This is a factor which weighs in *favour* of the grant of permission.

Main Issue 4: the principle of development outside the settlement boundary and compliance with DSP40:

54. It is important to note, as set out above, that DSP40 operates as an exception to the restraining policies CS14 and DSP6. Development outside the settlement boundary (which themselves are out of date both by reference to *Hopkins Homes* and the absence of a 5 year housing land supply) is expressly countenanced by DSP40. Indeed, the HLS SoCG records that the necessary HLS will not be achieved unless development is permitted on land outside settlement boundaries/allocations.
55. It is common ground between the Appellant, the Council and the County Council that the site is sustainably located in terms of accessibility to services and facilities by non-car mode. In addition, DSP40(ii) and (iii) set tests of acceptability in terms of the site's relationship with the urban area and the countryside surrounding. It is notable that the Council accepts that DSP40(ii) and (iii) are met by this proposal.
56. The presence of BMV is not said to warrant refusal and the other two issues under DSP40(v) taken by the Council (ecology and parking displacement) do not go to the principle of development outside the adopted settlement boundary. There is no, in principle, objection to development outside the settlement boundary, given the absence of a 5 year housing land supply.
57. The matter in issue is whether the Council is correct in asserting through RRefs (b), (c), (d) and (f), that DSP40(v) is breached. For the reasons give above, it is not.

Main Issue 5: Planning Balance (incl BMV & HLS):

58. The spatial application of the Fareham Local Plan is itself out of date as a result of it still being founded on a pre-NPPF assessment of development needs (see *Hopkins*

¹¹ Day, proof 11.8

Homes). In addition, as noted, there is an acknowledged failure to be able to demonstrate a 5 year housing land supply. Policy DSP40 is engaged in such circumstances, to operate as an exception policy to the otherwise constraining policies in the local plan, subject to its own five criteria. As an exceptions policy it operates more generously in the application of those five criteria than would the restraining policies. Compliance with the five criteria mean that a scheme which sits outside the out of date settlement boundary is none-the-less compliant with the development plan *taken as a whole*. That is the situation on the evidence here. According para.11(c) applies.

59. In addition, policy DSP40 is itself one of the ‘most important’ policies for the purposes of para. 11(d). It is, itself, caught by that deeming provision, such that it is to be considered out of date, and were there to be a breach of any one of the criteria, that breach may itself be accorded reduced weight. As has been found recently by appeal inspectors, it is apparent from the continued absence of a 5 year land supply, the Council has, in practice been too stringent in the application of DSP40’s criteria and it has not been allowed to fulfil its purpose of ensuring a sufficient quantum of housing is permitted.
60. Of the five criteria, only one, criterion (v) is said to be breached and for three specific reasons. Acknowledging the other four are met is, itself, material, as that indicates strongly the locational merits of the site as suitable for residential development, and the scheme’s own merits as a response to developing in this location.
61. Of the three issues identified above as falling into DSP40(v), the objection in respect of ‘on-site’ ecology is, on the evidence, now overcome, save that the witness for the Council states a legal point as regards information/assessment on dormice, bats and badgers. He does not raise a substantive allegation of harm to those species, whose habitats are being enhanced, not lost.
62. For the reasons given above, RRef (d) is not made out. If, however, RRef (d) is made out, the Inspector would be prevented by legislation from granting permission until the survey results were delivered. DSP40(v) would not be in play. As such, for us to be considering DSP40 and the prospect of a planning permission, it is because the

Appellant is correct, on the evidence, that the information on on-site ecology is been adequate.

63. A similar observation same may be said of the SPA objection [RRef (b)]. If the Council's witness is correct (which is disputed) that an appropriate assessment cannot favourably be concluded in respect of the development scheme, then the Habitats Regulations would operate to prevent the Inspector from granting permission. As such, similarly, DSP40(v) would not be a consideration; permission would have to be refused. Put the other way, for DSP40 to be in play, it is because the Inspector has concluded that the appropriate assessment does come out favourably.
64. As regards BMV and RRef (f), this was never considered to be a justification for refusing permission in itself. It is apparent that to deliver additional housing, BMV must be lost, as shown in the adopted allocations and the emerging allocations; this site is no different and the HLS SoCG acknowledges more land will be needed. The NPPF does not place a bar on development on BMV, and policy CS17 is at odds with that position, and out of date. The Newgate Lane East inspector correctly found that loss of BMV in these circumstances was not an 'unacceptable' environmental impact for the purposes of DSP40(v); it is respectfully submitted that is the case here. If schemes in Fareham were to be denied the operation of DSP(v) by reference to land quality classification, that policy would indeed be being 'too stringently' applied, robbing it of much of its efficacy.
65. For these reasons, if we are contemplating the operation of DSP40, the only substantive objection is what is left of RRef (c), namely the 'amenity' point around parking displacement.
66. It is submitted that to refuse a scheme for 225 dwellings (including affordable housing) in a sustainable location, in the absence of a 5 year housing supply and with a 'dire' affordable housing shortfall, without a capacity or safety objection under para 111 of the NPPF because a small number of residents may have to park a little further than they are currently wont is to take an unreasonable position; in no way can it be sensibly said that this 'inconvenience' significantly and demonstrably outweighs the significant and undisputed planning benefits of the scheme.

67. Accordingly, even were the Council's highways 'amenity' evidence to withstand scrutiny (which for the reasons set out above, it is submitted that it does not) permission should be granted for this scheme as sustainable development in the public interest and in accordance with national policy and the need to boost the supply of housing, both nationally and locally.

Conclusions:

68. For all the above reasons, the Inspector is respectfully asked to allow this appeal and to grant permission for this much needed, sustainable development.

CHRISTOPHER BOYLE QC

19th August 2021

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