

# **FAREHAM BOROUGH COUNCIL**

## **TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL**

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**APPEAL** by **Persimmon Homes South Coast** against the decision of **Fareham Borough Council** to refuse to grant planning permission for *'Development Comprising 206 Dwellings, Access Road from Peak Lane Maintaining Link to Oakcroft Lane, Stopping Up of a Section of Oakcroft Lane (From Old Peak Lane to Access Road), With Car Parking, Landscaping, Sub-Station, Public Open Space and Associated Works'* on **Land East of Crofton Cemetery and West of Peak Lane, Stubbington, Fareham, Hampshire**

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Planning Inspectorate Reference:      APP/A1720/W/21/3275237

Local Authority's Reference:            P/20/0522/FP

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

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## Appendices

NB: Appendices FBC.1 to FBC.12 are attached to the Council's Statement of Case.

- FBC.13 Email exchange of amended house type floor plans to address final part of refusal reason (iv)
- FBC.14 Historic England response dated 2<sup>nd</sup> September 2021
- FBC.15 Natural England response dated 31<sup>st</sup> August 2021
- FBC.16 Natural England Regulation 19 Consultation response dated 21 July 2021

## **1.0 INTRODUCTION**

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

*Refuse to grant planning permission for 'Development Comprising 206 Dwellings, Access Road from Peak Lane Maintaining Link to Oakcroft Lane, Stopping Up of a Section of Oakcroft Lane (From Old Peak Lane to Access Road), With Car*

*Parking, Landscaping, Sub-Station, Public Open Space and Associated Works'*

- 1.7. My evidence first sets out the planning policy relevant to this appeal along with the relevant planning history. Then I consider the planning merits of the development, having regard to the latest housing supply figures and other material considerations; and, finally drawing on the conclusions of the Councils expert landscape and design witness, Phillip Russell-Vick, whose evidence addresses the issues raised by the Council's reasons for refusal (dated 18 February 2021), insofar as these relate to landscape and design matters. This includes the landscape and visual effects on the countryside setting; the effects of the proposal on the key characteristics of the area, including consideration of green infrastructure proposed, and its connection to surrounding green/public spaces; and whether the design and layout is of the requisite "*high quality*".
  
- 1.8. On the basis of his expert opinion, and assuming that habitats and heritage impacts are satisfactorily addressed, I find the appeal development to be contrary to Development Plan Policies CS14, CS17, DSP6 and DSP40. I then undertake a planning balance, weighing up the identified landscape and design harm against the identified benefits. I conclude planning permission should not be granted. The appeal should therefore be dismissed.

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

- 2.1 The Appeal Development is described in the decision notice dated 18 February 2021 which is referred to at paragraph 3.2 below.
- 2.2 The application drawings and documents are listed at Appendix 1 of the Planning SoCG.
- 2.3 The appeal site and surroundings are described in Section 2.0 of the Planning SoCG.

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

#### **Officer Recommendation**

- 3.1 The planning application was subject to an officer recommendation for approval as detailed in the Committee Report (LPA SoC - FBC.1) dated 17<sup>th</sup> February 2021.

#### **Planning Committee Decision**

- 3.2 The Planning Committee resolved to refuse planning permission at the planning committee on 17<sup>th</sup> February 2021. The reasons for refusal are listed in the Decision Notice and copied below for ease of reference:

*The development would be contrary to Policies CS2, CS4, CS6, CS14, CS15, CS17, CS18, CS20, and CS21 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP6, DSP13, DSP14, DSP15 and DSP40 of the Adopted Local Plan Part 2: Development Sites and Policies Plan, and is unacceptable in that:*

- i) the provision of dwellings in this location would be contrary to adopted local plan policies which seek to prevent residential development in the countryside.*
- ii) the development of the site would result in an adverse visual effect on the immediate countryside setting around the site.*
- iii) the introduction of dwellings in this location would fail to respond positively to and be respectful of the key characteristics of the area, in this countryside, edge of settlement location, providing limited green infrastructure and offering a lack of interconnected green/public spaces.*
- iv) the quantum of development proposed would result in a cramped layout and would not deliver a housing scheme of high quality which respects and responds positively to the key characteristics of the area. Some*

*of the house types also fail to meet with the Nationally Described Space Standards.*

- v) *had it not been for the overriding reasons for refusal the Council would have sought to secure the details of the SuDS strategy including the mechanisms for securing its long term maintenance.*
- vi) *in the absence of a legal agreement to secure such, the development proposal would fail to secure a provision of affordable housing at a level in accordance with the requirements of the Local Plan.*
- vii) *in the absence of a legal agreement to secure such, the proposal would fail to; a) provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas, and b) secure the creation of the ecological enhancement area and its long term management and maintenance to enhance the wider Solent Wader and Brent Goose network.*
- viii) *in the absence of a legal agreement securing provision of the open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met.*
- ix) *in the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are in place to assist in reducing the dependency on the use of the private motorcar.*
- x) *in the absence of a legal agreement to secure such, the proposal would fail to provide a financial contribution towards education provision.*

3.3 Informative 2 on the decision notice read as follows:

*'Subject to the applicant first entering into a legal agreement to the satisfaction of Fareham Borough Council and Hampshire County Council, to ensure the financial contribution towards the necessary off site highway and public rights of way works, no objection is raised to the proposal on technical highway grounds.'*

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

3.5 It is considered that refusal reasons v) to x) can be addressed through either a legal agreement or planning condition[s].

3.6 Finally, in respect of the issue set out in the last sentence of refusal reason iv) [size of some house types], David Buczynskyj of Persimmon Homes email the case officer at FBC on 26 April 2021 indicating that they had amended the plans for the two house types (Hanbury (variations) and 4620a V2) so that they now met the Nationally Described Space Standards. The case officer at the Council replied by email on 28 April 2021 confirming that these amendments were acceptable to the Council and would address that element of the reason for refusal on the planning application. The case officer finished by stating that *"the LPA has no objection to them being submitted to the Planning Inspectorate to address that part of the reason for refusal"*. This email exchange is attached at Appendix FBC.13

## 4 RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history pertaining to the appeal site is set out in Section 3 of the Planning SoCG.
- 4.2 In this regard it is material to note that there is a current outline planning application before the council for "Outline Application For Up To 180 Dwellings (South Of Oakcroft Lane) And Ecological Enhancement Area (North Of Oakcroft Lane) And Associated Works With All Matters Reserved Except For Access" [P/21/1211/OA refers]. The application forms confirm that all matters, with the exception of access, are reserved for latter consideration. A number of parameter plans are submitted for illustrative purposes including a building heights plan, although the modified plan has made it clear that heights will not be limited to two storey but will also have rooms in the roof. There is also an addendum to the LVIA.
- 4.3 Historic England have provided an updated position in respect of that application by way of their consultation response dated 2<sup>nd</sup> September 2021 (FBC.14) in which they state, inter alia:

*"The main changes of the current scheme to the latter proposals would see decrease in the layout density, as the number of dwellings is now reduced to 180 units, following the proposed allocation of the site in the emerging Local Plan 2037 (Policy HA54); reduction of units' height to two storeys with accommodation in the roof; deeper setbacks of buildings from the western and south-eastern edges of the site, allowing for a more robust landscaped buffer along the perimeter; increase of open spaces, and introduction of tree lined corridors to improve connectivity through the site and to the surrounding landscape.*

*These alterations will result in limited reduction of the magnitude of change on the landscape character and of the visual effects on identified sensitive receptors, compared to the previous scheme. In particular, the dwelling set-back and strengthened landscaping would partially mitigate the adverse visual and acoustic impact on the setting of the*

*grade-II\* listed Crofton Old Church and proximate Crofton Cemetery.*

*The Addendum to the Landscape and Visual Impact Assessment produced by ACD Environmental Ltd in June 2021, has provided a review of the potential impact of the new scheme on a number of viewpoints which were considered under the original assessment to be affected by the development proposals. With reference to Crofton Cemetery (Viewpoint 2), in particular, the document states that, while the impact will be reduced due to the introduction of a landscaped belt filtering views and sounds, the current scheme would continue to form a new and recognisable feature in the landscape altering its character from rural to suburban. Accordingly, the overall conclusions of the new assessment are the same as those of the original LVIA, where the visual effects on that sensitive receptor were considered to be major/moderate.*

*On this basis, our previous concerns remain. Although views of the proposed development from Crofton Church or churchyard will be limited, it would still have an adverse impact on the setting of the listed building through erosion of its wider rural setting, which is a key element contributing to its significance.*

- 4.4 Natural England have also provided a detailed consultation response dated 31<sup>st</sup> August 2021 (FBC.15) in which they provide new comments in respect of New Forest Recreational Impacts. They state, inter alia:

*As recently raised in our response to the Fareham local plan, recent research and analysis by Footprint Ecology (a national leader in this area of expertise) identified that planned increases in housing around the New Forest designated sites will result in a marked increase in use of the sites and exacerbate recreational impacts. It found that the majority of visitors to the New Forest designated sites on short visits/day trips from home originated from within a 13.8km radius of the site.*

*This development site falls within the 13.8km zone and we consider it is likely to contribute to recreational impacts on the sites in-combination with other development coming forward across the area. It is advised your authority's appropriate assessment is updated to include an in-*

*combination assessment of the development with other plans/projects either within the authority area or in neighbouring areas. Competent authorities will be aware of recent CJEU decisions regarding the assessment of elements of a proposal aimed toward mitigating adverse effects on designated sites and the need for certainty that mitigating measures will achieve their aims.*

*The resultant recommendations from the recent research highlight that a package of mitigation measures will resolve the issues presented by housing growth in the area, but this will require a 'strategic, proportionate, and co-ordinated approach, [through] partnership working across a range of local authorities and stakeholders'. Natural England are committed to working with affected local authorities to develop a strategic approach to addressing recreational impacts from new development on the New Forest designated sites.*

*Until such a strategic approach is adopted it is advised at this time that alternative and appropriate mitigation measures are sought to address impacts on the protected sites. It is considered that a financial contribution, based on a robust and agreed methodology, directed towards measures at the designated sites e.g. via the New Forest National Park Authority's Habitat Mitigation Scheme, is a means that will enable the Authority to deliver site specific mitigation measures on behalf of the applicant. Such an approach would provide a certain and robust means to addressing the effects of recreational disturbance via direct measures at the protected sites. Some detail on how this money will be used as part of the Scheme is advised to ensure you as competent authority can be satisfied the recreational impact from this development will be appropriately addressed and secured in perpetuity.*

- 4.5 The implications of this objection in terms of the Habitats Assessment will be discussed later in my Proof.

## 5 **PLANNING POLICY CONTEXT**

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

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

- 5.5 **Policy CS14** (Development Outside Settlements) 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 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.'* (emphasis added)

5.6 **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 demonstrated adherence to the principles of urban design and sustainability to help create quality places.'*

5.7 **Policy CS21** (Protection and Provision of Open Spaces) states, in part:

*'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'*

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

5.8 The Local Plan Part 2 (LPP2) was adopted on 8th June 2015. The following policies were listed in the reasons for refusal and are considered relevant to the determination of this appeal.

5.9 **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.'*

5.10 **Policy DSP6** (New Residential Development Outside of the Defined Urban Settlement Boundaries) states in part:

***'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) 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 existing dwellings.*

*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.'*  
(Emphasis added)

5.11 **Policy DSP40** (Housing Allocations). The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 (Housing Allocations) makes provision for a situation where there is a shortfall in HLS.

5.12 Having set out the approach to allocated sites for housing, DSP40 then addresses the policy approach to be applied where a five year supply of housing cannot be demonstrated:

*Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary,*

*may be permitted where they meet all of the following criteria:*

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

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

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

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

5.14 This policy was found sound by the Local Plan Inspector in his May 2015 report on the LPP2 (CD4.4). The Inspector recommended that the policy was modified to include criteria for residential development to be considered against in the context of a HLS shortfall. The adopted policy was modified in line with the inspector's recommendations. Policy DSP40 is consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing site beyond the settlement boundary when a five-year land supply cannot be demonstrated. The inherent flexibility in DSP40 ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 59 on '*significantly boosting the supply of homes*', whilst providing

decision-makers with a framework to ensure that other considerations (including environmental considerations) – the importance of which are also recognised by national policy - are addressed.

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

*Designated and non-designated heritage assets are an irreplaceable resource that will be conserved in a manner appropriate to their significance, to be enjoyed for their contribution to the quality of life of this and future generations. The wider social, cultural, economic and environmental benefits of their conservation will also be taken into account in decision making.*

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

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

*Listed Buildings will be conserved by:*

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

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

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

### **Emerging Local Plan 2037**

- 5.12 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 5.13 At a meeting of the Council’s Executive on February 1<sup>st</sup> 2021 the Executive Leader announced that, following the publication of the revised Planning Practice Guidance on housing need in December 2020, a further consultation will take place on changes to the Publication Local Plan in early summer 2021 after the necessary technical work has been undertaken.
- 5.14 At the Council’s Planning & Development Scrutiny Panel on 25<sup>th</sup> May 2021 the Revised Publication Local Plan was considered. The revised Local Development Scheme was passed at Executive on 7<sup>th</sup> June 2021 and Full Council on 10<sup>th</sup> June 2021. The consultation period was from 18<sup>th</sup> June – 30<sup>th</sup> July 2021.
- 5.15 **Policy D1 (High Quality Design and Placemaking)** notes at paragraph 11.3 that:

*The NPPF, as supported by Planning Practice Guidance (PPG), and the National Design Guidance (NDG) and the National Model Design Code (NMDC), states that that the design quality of new development is more than just the appearance, form, materials and detail of buildings. It includes the arrangement of buildings within a layout, how close together they are, the spaces in between buildings, the views and*

*vistas they create, landscape and planting, biodiversity, other uses and activities, the richness of users' experience both visual and aural, and how they connect with existing and proposed essential services and facilities.*

5.16 Paragraph 11.8 makes clear that a well-designed, contextual development demonstrates that it is:

- *based on a sound understanding of the features of the site and the surrounding context, that should include those identified above; and*
- *integrated into their surroundings so it relates well to them; and*
- *influenced by and influence their context positively; and*
- *responsive to local history, culture and heritage*

5.17 In terms of public spaces, paragraph 11.17 makes clear that:

*Public space has many forms and scales and is more than public parks or open spaces. Public space includes, roads, streets, squares and other hard surfaced incidental spaces. They should be visually attractive, include planting and a variety of habitats, connected to desire lines as well as being safe and secure for all users. Public space should be designed to be the focus and the heart of new development, ensuring priority for people.*

5.18 **Policy D1** itself states:

*Development proposals and spaces will be of high quality, based on the principles of urban design and sustainability to ensure the creation of quality places.*

*Development proposals will be permitted where compliance with the following key characteristics of high quality design, as set out in paragraphs 11.5-11.27, has been demonstrated:*

- Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and*
- Identity - where proposals create places that are attractive, memorable, distinctive and of strong character; and*
- Built form - where proposals create a three-dimensional pattern or arrangement and scale of development*

- blocks, streets, buildings and open spaces, that are coherent, attractive and walkable; and*
- iv. Movement - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity; and*
  - v. Nature - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure; and*
  - vi. Public spaces - where proposals create public spaces that are attractive, safe, accessible and provide a focus for social interaction, and promote healthy activity and well-being; and*
  - vii. Uses - where proposals provide or are well related and connected with, a mix of uses that provide the day to day needs of users; and*
  - viii. Homes and buildings - where proposals provide a variety of dwelling sizes and tenures, have sufficient space and are well related to public space; and*
  - ix. Resources - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste; and*
  - x. Lifespan - where proposals are designed and constructed to create enduring high-quality buildings, spaces and places that are attractive and functional, which weather well and can be adapted to users' needs with efficient management and maintenance.*

5.19 In terms of how this policy works, paragraph 11.28 states:

*The quality of buildings, spaces and places will be assessed at all scales and having regard to all users. Quality design will be at the heart of the Council's decisions, from the location of new development at a strategic level through to the design and appearance of buildings and spaces, their details, landscaping and how they are to be managed and maintained for the long term.*

5.20 The **draft allocation (HA4)** [see FBC.4] relates to the appeal site indicates an indicative yield of 180 dwellings. The draft allocation sets out a series of site-specific requirements and the following are considered directly relevant to the main issues in this appeal:

- a) *that the quantity of housing proposed shall be broadly consistent with the indicative site capacity;*
- c) *Development shall only occur on land to the south of Oakcroft Lane, avoiding areas which lie within Flood Zones 2 and 3, retaining this as open space; and*
- e) *The scale, form, massing and layout of development to be specifically designed to respond to nearby sensitive features such as neighbouring Solent Wader and Brent Goose sites shall be provided; and*
- f) *Building heights should be a maximum of 2 storeys; and*
- g) *A network of linked footpaths within the site and to existing PROW shall be provided; and*
- h) *Existing trees subject to a Tree Preservation Order should be retained and incorporated within the design and layout of proposals and in a manner that does not impact on living conditions; and*
- i) *Provision of a heritage statement (in accordance with policy HE3) that assesses the potential impact of proposals on the conservation and setting of the adjacent Grade II\* and Grade II Listed Buildings;*

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

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

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

*For plan-making this means that:*

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

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

6 The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.

7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

5.18 National policy on design has been substantially strengthened in the revised Framework. Chapter 12 of the Framework. "*Achieving well-designed places*" has been significantly revised.

5.19 The new paragraph 134 states, bluntly, that "*Development that is not well designed should be refused.*"

5.20 The overarching social objective of the planning system now has "*beautiful*" added to the previous requirement to provide "*a well-designed, [beautiful] and safe built environment*". There is no definition of "*beautiful*", which is necessarily context specific.

5.21 By the simultaneous launch of the long-awaited National Model Design Code and National Design Guide, the clarification of what

constitutes good design is given, in my professional judgement, a major boost in the new NPPF.

- 5.22 Paragraph 128 links the plan making process to the government's own National Design Guide and National Model Design Code: *"To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high-quality standard of design."*
- 5.23 Emphasis is placed on community involvement. New 127 substitutes the role of "Neighbourhood planning groups", for "neighbourhood plans".
- 5.24 Paragraph 129 is entirely new. It ties the preparation of local design guides and codes to the National Design Guide ("the Guide") and the National Model Design Code ("the Code"), as *"part of a plan or supplementary planning documents"*. The new Guide and Code have direct effect too; if there is no local guide or code, decisions are to be made in accordance with the Guide and Code.
- 5.25 Paragraph 131 introduces new policy encouraging planning policies and decisions to *"ensure that new streets are tree-lined"* and backs it up in Footnote 50: *"unless there are clear, justifiable and compelling reasons why this would be inappropriate"*, also encouraging new tree planting in parks and orchards and retention of trees in new development.
- 5.26 Finally, Paragraphs 199 to 208 of the Framework set out how to consider the potential impacts of development on heritage assets. In this regard paragraph 199 makes clear:

*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This*

*is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

5.27 In terms of how to deal with situations where less than substantial harm is found to exist, paragraph 202 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.*

### **National Design Guide and National Model Design Code**

5.28 The Code devotes a whole page to setting out the “Purpose” of the new guidance. It makes it clear that the Code is:

*“to provide detailed guidance on the production of design codes, guides and policies to promote successful design. It expands on the ten characteristics of good design set out in the National Design Guide, which reflects the government’s priorities and provides a common overarching framework for design.”*

5.29 The ten characteristics of good design in the Guide are:

- Context: Enhances surroundings
- Identity: Attractive and distinctive
- Built form: Coherent pattern of development
- Movement: Accessible and easy to move around
- Nature: Enhanced and optimised
- Public spaces: Safe, social and inclusive
- Uses: Mixed and integrated Homes and buildings: functional, healthy and sustainable
- Resources: Efficient and resilient
- Lifespan: made to last.

## **Fareham Borough Design Guidance SPD (Excluding Welborne) [CD7.9]**

- 5.30 The Fareham Borough Design Guidance (excluding Welborne) SPD provides further visual guidance to Policy CS17: High Quality Design of the Core Strategy and sets out Fareham Borough Council's aspirations for high quality design to householders, developers and other interested parties. It was adopted on 21<sup>st</sup> December 2015 following a period of public consultation, before the publication for the National Design Guide.
- 5.31 The principles within the Design Guidance provide a clear framework through which high quality design can be achieved in the Borough's different settlements while having due regard to their unique characteristics.
- 5.32 Section 3: New streets; New public spaces - The section on New streets and New public spaces has been prepared to be of most benefit to developers who may have some previous experience of the planning system but are otherwise looking for guidance on good design. It deals with the typical issues of how to ensure development respects existing surrounding properties, the context and character of an area.
- 5.33 Section 3 commences by making clear that well designed development will connect into existing routes and where possible enhance them. Where new streets are proposed they should respect the existing route hierarchy and ensure good pedestrian links to key destinations.
- 5.34 On page 15 the guidance sets out that *"Trees and planting are essential elements in creating high quality well designed streets and spaces. Care should be taken to ensure that there is sufficient space for the planting to mature and achieve its potential as well as adequate space to maintain the planting. The species and siting should not give rise to pressures in the future leading to pruning, lopping or felling due to space, amenity, ownership or future*

*infrastructure maintenance issues. Retained trees must be designed into the scheme in a positive way, such as a focal point within public open space.”*

- 5.35 On the issue of ‘New public spaces’ [page 16] the guidance makes clear that larger developments will be expected to provide new well designed and thought-out public spaces which function successfully. New development adjacent to existing public spaces will take every opportunity to improve and enhance these spaces and where possible should connect to surrounding public spaces. The scale of surrounding buildings and their uses should reflect the type of public space, its size and location (e.g. town centre, residential, etc.

## 6 PROPER APPROACH TO DETERMINING THIS APPEAL

### The Section 38(6) test

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

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

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

when applying the tilted balance.

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

### **Housing Land Supply**

- 6.4 The Council's position in terms housing land supply position statement is set out in Chapter 7 of my evidence.

- 6.5 In summary, it is agreed that the LPA is currently unable to demonstrate a five-year housing land supply and that as a result the presumption in favour of sustainable development applies for the determination of this appeal. From the evidence provided at the time of writing my proof it appears that there is little difference between the respective parties on the precise extent of the current shortfall, with the Appellant<sup>1</sup> identifying a land supply in the range of 3.39 and 3.66 years and the Council identifying a 3.57 year housing land supply – within the appellant's range. In any event, I accept that the shortfall is material. As such I do not consider it necessary for the Inspector to conclude on the precise extent of the shortfall.

### **Heritage Issues**

- 6.6 The Council have not alleged (and in this appeal are not alleging as part of its case) that the proposal would cause any harm to the setting of the Grade II\* listed church. As such, I have undertaken the planning balance on the premise that no heritage harm would be caused by the proposal.

- 6.7 However, the views of Historic England and some third parties are that there is some harm to the setting of two listed buildings – the Grade II\* listed Crofton Old Church and the Grade II listed Crofton

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<sup>1</sup> See Table 14 of their Statement of Case

Manor Hotel. For completeness, and conscious of my professional obligations, I am of the view that that there would be less than substantial harm to the setting of the Grade II\* listed church, albeit at the lower end of the scale.

6.8 It is therefore appropriate for me to set out the proper approach to assessing heritage harm, in order to assist the inspector should she conclude (contrary to the Council) that there would be harm caused to the significance of the listed buildings.

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

6.10 Furthermore, paragraph 202 of the Framework states:

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

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

## **Habitat Issues**

6.12 As set out at 4.4 above, Natural England have objected to the current outline planning application on the appeal site for up to 180 units. This follows recent research and analysis by Footprint Ecology which indicates the level of impact on the SAC from additional housing development within a distance of 13.8km from the New Forest SAC, as well as housing schemes for over 200 units within 15km, both distances being measured as the crow flies. The implications of this for decision-making purposes is addressed in my Chapter 8.

## **Weight given to a breach of DSP40 and CS14 / CS17 / DSP6**

6.13 In cases where a proposal is found to be in breach of policy DSP40, that policy must be given very significant weight in the planning balance. This is because the fact that policy DSP40 is breached puts the development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led.

6.14 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy.

6.15 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 [FBC.5] ("*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."*

6.16 In the case of the *Land West of Old Street, Stubbington* (Appeal Ref. APP/A1720/W/18/3200409 provided at FBC.8), as with other recent appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial. At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

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

6.17 The *Land East of Posbrook Lane, Titchfield* appeal decision [FBC.9] dated 12 April 2019, referred to in the *Newgate Lane (North)* appeal [FBC.11], is also useful where Inspector Stone determined he had

no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52) but on respect of Policy DSP40, however, he concluded at Paragraph 68 that:

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

6.18 In the *Land East of Downend Road, Portchester* appeal decision [FBC.10]. In this decision letter, dated 5<sup>th</sup> November 2019, which at paragraph 90, Inspector Gould erred on the side of caution and considers the Appellant's housing figures to better represent the current situation. However, notwithstanding this fact, he concludes at paragraph 97 that:

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

6.19 In the case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham* (provided at FBC.11) as with other recent appeals, Inspector Jenkins did not see a need to determine the precise extent of the shortfall but considered it to be substantial.

6.20 In the recent case of *Land at Newgate Lane (East)* (Appeal Refs. APP/A1720/W/20/32665860 and 3269030 provided at CD6.6), the Inspector used the LPAs figure of 3.57 years as a benchmark to assist in making his decision.

6.21 The matter of weight to be given to Policy DSP40 was considered in his [Inspector Jenkin's] Planning Balance section of the *Newgate Lane (north)* appeal at paragraphs 108 to 110 of his decision letter and due to their relevance, I repeat them in full below:

108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

6.22 At paragraph 13 of the recent Newgate Lane East appeal decision letter the inspector notes that it was common ground between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:

- ii Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and*

v. *Would not have any unacceptable environmental ... implications.*

6.23 At paragraph 16 the inspector refers to the Peel Common decision [Newgate Lane (North) and (South)] in respect of the weight to be attributed to certain policies, stating:

*"I agree with his conclusion that LP1 Policies CS2 and CS6 are out-of-date in the terms of the Framework and that against this background, the weight attributable to conflicts with Policies CS14 and CS22 of the LP1 and LP2 Policy DSP6 is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements."*

6.24 At paragraph 26 the inspector expresses the clear view that he sees no reason why criterion (ii) should not also be considered from a landscape and visual perspective.

6.25 At paragraph 27, considering criterion (iii), he considers that there was no reason why the reserved matters could not result in a detailed design that reasonably reflects the character of the adjoining settlement *"provided that development is limited to dwellings of no more than two storeys, given the prevailing scale of development in those neighbouring suburbs"*. His footnote 4 makes clear that he is making this point because the illustrative material accompanying the planning applications referred to 2½ storey elements.

6.26 In paragraph 28 of the decision letter the inspector expands upon the interpretation of "minimise" in the context of criterion (iii) set out in the Peel Common decision letter, stating:

*In summary, he explained that the aim of Policy DSP40 is to facilitate housing in the countryside relative in scale to the five-year housing land supply shortfall, and went on to say that any new housing in the countryside would be likely to register some adverse landscape and visual effect such that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as location, scale, disposition and landscape treatment. I broadly agree with his approach because otherwise the Policy would be likely*

*to become self-defeating in terms of failing to reasonably respond to a housing delivery shortfall which it is, in part, designed to address.*

- 6.27 I agree with this approach, otherwise DSP40(iii) would be self-defeating. However, as the inspector in this appeal found, the fact that it was an outline application gave him the opportunity to grant permission making clear that there was no reason why a reserved matters application in that case could not limit the extent of landscape harm and also reflect the character of the adjoining settlement, in particular by being no more than two storeys.
- 6.28 Finally, in the planning balance the inspector sets out at paragraph 46 the weight he attaches to various policies and I repeat the paragraph in full below:

*"Although the weight attributable to the wider conflicts with LP1 Policies CS14 and CS22 is reduced, there would nonetheless be harm caused to the character and appearance of the area, including in terms of the Strategic Gap. LP2 Policy DSP40 criteria (ii) and (iii), however, carry greater weight, albeit that the evidence indicates that the balance they strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the housing supply shortfall has persisted for a number of years in spite of this Policy. For the purposes of making my decision I have treated LP1 Policy CS17 as carrying full weight."*

- 6.29 Having regard to the findings of the Inspectors in the recent Newgate Lane (North and South) and the Newgate Lane (East) appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 7 of the NPPF, since criterion (ii) seeks to ensure that new housing can be well integrated with the neighbouring settlement; and (iii) requires a sensitive design to reflect the character of the neighbouring settlement; and (v) seeks to avoid an unacceptable environmental, it is consistent with the Framework, especially with the new emphasis towards high quality design. Accordingly, on the basis of the main issues in this case, any breach of policy DSP40

should be afforded considerable weight and a breach of CS17 afforded full weight.

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

- 6.30 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74 [FBC.12].
- 6.31 NPPF Footnote 7 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 6.32 NPPF Paragraph 11(d) states that for decision-taking, the presumption in favour of sustainable development means as follows:  
*'Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*  
*(i) The application of policies in this framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*  
*(ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.'*
- 6.33 There are two tests set out at NPPF 11(d). It is the correct approach (see *Monkhill*) to apply these tests sequentially, the first test being whether there are policies within the Framework which provide a clear reason for refusing the Appeal Development. The Council considers that there are policies of this type in the Framework, as referenced at footnote 6 of paragraph 11(d) ('habitats sites' and 'designated heritage assets'). In respect of 'heritage assets' it is the Council's position that there is no harm arising. In respect of 'habitats sites' it is now evident that there is an objection from

Natural England on the outline application in respect of impact on the New Forest SAC. I deal with the implications this matter in Section 8 of my Proof.

- 6.34 As to how what is now footnote 6 operates where a footnote 6 policy is in play, Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74, held at 28-30:

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

- 6.35 In respect of paragraph 11 d) (ii), I accept that Policy DSP40 is deemed to be out of date due to the operation of footnote 7. However, it has been found by the local plan inspector along with inspectors in s78 housing appeals to be sound and relevant. As set out earlier a breach of this Policy is a matter that must "*weigh very heavily against*" the proposals as emphasised by Inspector Jenkins in the Newgate Lane appeal decisions. Following the Court of Appeal decision in in **Gladman Developments Ltd v SSHCLG** [2021] EWCA Civ 104 [FBC.7], it is clear that a breach of development plan policies is capable of weighing against a development when paragraph 11 d) (ii) (the titled balance) is applied.

## 7 HOUSING LAND SUPPLY

- 7.1 Paragraph 73 of the NPPF requires local planning authorities to 'identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five-years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five-years old.' Deliverable sites are sites which are available now, offer a suitable location for development now and must be achievable with a realistic prospect that housing will be delivered on the site within 5 years.
- 7.2 It is accepted that the LPA is currently unable to demonstrate a five-year housing land supply and that as a result the presumption in favour of sustainable development applies for the determination of this appeal. The Council's current position is set out in the table below.

### Updated Five Year Housing Land Supply Position

	<b>HOUSING REQUIREMENT</b>	
A	Local Housing Need: Dwellings per annum	539
B	Local Housing Need: Total requirement for 1st January 2021 to 31st December 2025	2,695
	20% Buffer -delivery of housing over the previous 3 years, has fallen below 85% of the requirement, as set out in the 2020 Housing Delivery Test results	539
D	<b>Total housing requirement for period from 1st January 2021 to 31st December 2025 [B+C]</b>	<b>3,234</b>
E	Annual requirement for period from 1st January 2021 to 31st December 2025	647
F	<b>Expected housing supply for the period from 1st January 2021 to 31st December 2025</b> <i>(Supply as set out in February 2021 HLS Position Statement (FBC.7) with adjustments as described above)</i>	<b>2,310</b>
G	Housing Land Supply Position over period from 1st January 2021 to 31st December 2025 [F-D]	-924
H	<b>Housing Supply in Years [F /E]</b>	<b>3.57</b>

- 7.3 The Appellant, in their Statement of Case, identify at Table 14 three revised trajectories which indicate a housing land supply in the range of 3.39 and 3.66 years.
- 7.4 At the CMC the appellants were specifically requested to inform the LPA if their position was likely to change from that set out in the Statement of Case, and to give the Council the details of any updated position. No correspondence has been received from the appellants on this matter since the CMC.
- 7.5 On this basis, it appears that the parties are essentially agreed about the housing land supply position. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall, nor for there to be a detailed analysis of housing supply issues.

## **8 HABITATS CONSIDERATIONS**

### **Considerations Arising Prior to determination of the Application**

- 8.1 The application has been supported by a number of ecological surveys, and each of these have been considered in detail by the Council's Ecologist. Reasons for refusal (vii), and (viii) relate to the impact on protected species; and, impact on the Brent goose and Solent Waders network.
- 8.2 The land to the northern side of Oakcroft Lane is proposed for use as open space, and would comprise a wildflower meadow with scrapes to enhance its function as a 'secondary support area' for the waders and Brent geese that winter along the south coast, as identified in the Solent Waders and Brent Geese Strategy (October 2018). The land would be prepared by the applicant to the satisfaction of the Local Planning Authority, and then transferred to the Council with a maintenance contribution for the first 20 years. This would be secured via the Section 106 legal agreement.
- 8.3 The provision of a biodiversity enhancement area, with detailed mitigation measures in place to the north of Oakcroft Lane addresses reasons for refusal (ix), (x) and (xi). Reason for refusal (xi) is also addressed by the increased level of landscaping belts to the periphery of the southern part of the site. All these elements combine to address the impact on biodiversity loss, and the scheme now results in a measurable increase in biodiversity, addressing reason for refusal (xii). The development proposal now benefits from support from both the Council's Ecologist and Natural England, subject to a Section 106 Legal Agreement and suitably worded planning conditions.
- 8.4 The site is located within 5.6km of the Solent, and therefore the development is likely to have a significant effect on the following designated sites: Solent and Southampton Waters Special

Protection Area and Ramsar Site, Portsmouth Harbour Special Protection Area and Ramsar Site, Solent and Dorset Coast Special Protection Area, Chichester and Langstone Harbours Special Protection Area and Ramsar Site, and the Solent Maritime Special Area of Conservation. These designations are collectively known as the Protected Sites around The Solent. Policy CS4 sets out the strategic approach to biodiversity in respect of sensitive protected sites and mitigation impacts on air quality. Policy DSP13 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.

- 8.5 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.
- 8.6 In light of their importance, areas within the Solent have been specifically designated under UK law, and comprise those designations set out above.
- 8.7 Regulation 63 of the Habitats and Species Regulations 2017 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 Protected Sites 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 Protected Sites. This is done following a process known as an Appropriate Assessment. The competent authority (which, at the application stage, was Fareham Borough Council, but is now the inspector on appeal) is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations.

- 8.8 The application has also been supported by a Shadow Habitats Regulations Assessment prepared by the applicant's consultants which, together with the Council's Appropriate Assessment has been considered by Natural England. The key considerations for the assessment of the likely significant effects are set out below.
- 8.9 Firstly, in respect of Recreational Disturbance, the development is within 5.6km of The Solent SPAs and is therefore considered to contribute towards an impact on the integrity of the Protected Sites as a result of increased recreational disturbance in combination with other development in The Solent area. The applicant has agreed to make the necessary contribution towards the Solent Recreation Mitigation Partnership Strategy (SRMP), which would be secured via the Section 106 legal agreement, and therefore the Appropriate Assessment concludes that the proposals would not have an adverse effect on the integrity of the Protected Sites as a result of recreational disturbance in combination with other plans or projects.
- 8.10 Natural England has also 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 Protected Sites. As stated earlier in the Report, the proposed development will remove the land from agricultural use, and thereby mitigate the impact of nitrates from the development.
- 8.11 Natural England has further advised that the effects of emissions from increased traffic along roads within 200 metres of the Protected Sites also has the potential to cause a likely significant effect. The Council's Air Quality Habitat Regulations Assessment highlights that developments in the Borough would not, in combination with other plans and proposals, have a likely significant effect on air quality on the Protected Sites up to 2023, subject to appropriate mitigation.

- 8.12 Finally, in respect the impact on water quality, a nitrogen budget has been calculated in accordance with Natural England's 'Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' (June 2020) which confirms that the development will result in a reduction of -153kg TN/year (with precautionary 20% budget) (Note: this was increased from -151kg due to the further loss of 3 dwellings from the scheme). Due to significant reduction in nitrates level, the scheme would make a significant contribution to reducing the amount of nitrates and phosphorus from entering the water environment. The scheme would also be subject to a planning condition which requires details to be submitted to and approved by the Council showing how the water usage within the dwellings of 110 litres per person per day can be achieved.
- 8.13 The Council carried out an Appropriate Assessment and concluded on the basis of the evidence before it at the time of determination, in conjunction with the applicant's submitted Shadow Habitat Regulations Assessment that the proposed development, which would take over 15ha of land out of agricultural use and subject to the water usage condition, will ensure no adverse effects on the integrity of the Protected Sites either alone or in combination with other plans or projects. The development will result in a reduction of over 150kg TN/year of nitrates being discharged from the site. Natural England has been consulted and has agreed with the considerations of the Shadow HRA and the Council's findings, subject to the Council adopting the Shadow HRA. It is considered that the development would accord with the Habitat Regulations and complies with Policies CS4 and DSP13 and DSP15 of the adopted Local Plan. At the time of determination, therefore, the application proposal was therefore considered to comply with point (v) – environmental impact of Policy DSP40, and in doing so satisfactorily addresses reasons for refusal (ix) to (xiii) from the earlier application.

## **Post Decision Changes in the Position of Natural England concerning New Forest SAC**

- 8.14 The Council first became aware of Natural England raising an issue in respect of the New Forest SAC in their response to the Regulation 19 Local Plan Consultation. This was raised in NE's representations dated 29 July 2021 (See FBC.16).
- 8.15 In respect of emerging new housing allocations and the Local Plan HRA, Natural England state the following:

*We welcome the fact that consideration of recreational disturbance to the New Forest SPA, SAC and Ramsar sites has been updated, with sections 6.4.18 to 6.4.20 referencing recent analysis of the New Forest 'zone of influence' (Footprint Ecology, February 2021). The report is based on recent visitor survey reports published in 2020 that conclude that new residential development within a 13.8km buffer zone of the New Forest designated sites is likely to have a significant effect on the sites via recreational disturbance, alone and/or in combination with other plans or projects.*

*The report suggests that the borough of Fareham is excluded from the 13.8km zone based on low average visitor rates in comparison to local authorities further west, and relatively low visit rates derived from the onsite survey data. It also recommends that large developments of around 200 or more dwellings within 15km of the New Forest sites should be subject to project HRA and mitigation may be required. The revised local plan HRA reflects this recommendation.*

*However, although the average visit rate for the borough is lower than that for neighbouring Eastleigh, it is notable that postcode data resulting from the telephone survey show visit frequencies in the western parts of Fareham are similar to those in the neighbouring borough of Eastleigh, suggesting the visit rate from these areas are higher than the average visit rate applied to the whole borough. Clearly, visitors do originate from these areas of Fareham and it is Natural England's view that they are likely to contribute to an in-combination effect on the sites. Therefore, to ensure the necessary certainty required under the Habitats Regulations that the Plan will appropriately address the impact, it is advised that the 13.8km zone is applied within the borough of Fareham to ensure all new development coming through in that area provide appropriate mitigation. (Please note that large development within 15km should also still be subject to HRA for this impact pathway.)*

*It is advised that your authority works in close collaboration with other affected local authorities within and surrounding the New Forest designated sites which share a commitment to develop a strategic, cross-boundary approach to habitat mitigation for the New Forest SPA/SAC/Ramsar. Natural England recommend such a strategy incorporates a package of measures including provision of suitable alternative green spaces and networks, and direct measures on the sites such as access management, education and communication, wardening, and importantly, monitoring. Monitoring work (of visitor patterns and ecological features of the sites) will be important to further the evidence base on which mitigation strategies can be updated.*

*In advance of such a strategy being agreed and adopted, Natural England advise the Council to implement a suitable interim strategy that ensures adverse effects from live development coming through the local plan period will be avoided. This may include measures as described above. Financial contributions can be directed towards the New Forest National Park Authority's (NFNPA) Habitat Mitigation Scheme that will enable the authority to deliver site specific mitigation measures on behalf of developments; such an approach would provide a certain and robust means to addressing the effects of recreational disturbance via direct measures at the protected sites. It is recommended that suitable levels of contribution are agreed with the NFNPA.*

*Natural England are committed to continue working with Fareham Borough Council and other affected local authorities to develop a strategic approach to addressing recreational impacts from new development on the New Forest designated sites.*

- 8.16 As set out at paragraph 4.4 above, Natural England have also specifically objected to the current outline planning application for up to 180 dwellings, as set out in their letter of 31<sup>st</sup> August 2021. Although the Council do not believe that Natural England have been specifically reconsulted by PINS on the appeal proposal, there is no reason to believe that they would adopt a different stance.
- 8.17 The Inspector and the appellants were advised of the change in the position of Natural England at the CMC meeting on Monday 16<sup>th</sup> August 2021.
- 8.18 By way of a telephone conversation with the case officer at the Council during the week of 23-27 August 2021, Persimmon Homes

advised the Council that they were considering requesting a delay to the start of the inquiry in order to enable them time to consider how to deal with this issue. The Council advised that they would not object to such a request. However, by way of an email on 13<sup>th</sup> September 2021 Persimmon advised the Council that they will not be seeking a postponement to the appeal.

- 8.19 The current position is that it is unclear to the Council as to how the Appellant is intending to address the issues raised by NE. Only preliminary discussions have been had and it is believed that Persimmon Homes were looking into the prospect of using the land to the north of Oakcroft Lane as a SANG. Their ecologist would need to come to some solution which would enable partial use all year without impacting on the overwintering birds.
- 8.20 In terms of the strategic approach being adopted by the Council in order to address the Reg 19 objection, the Council has joined the New Forest Project Steering Group which is looking to develop more strategic scale mitigation for all authorities involved/impacted. In the interim, the Council are considering various options, but it is likely a range of mitigation measures such as contributions towards enhancing existing POS in the Borough and contributions towards mitigation measures directly at the New Forest are to be employed as a means of reducing the likelihood of residents from travelling to the New Forest SPA.
- 8.21 The upshot of all of this is that, although not part of the Council's case, PINS is the competent authority and as a matter of law will need to be satisfied, notwithstanding NE's position, either that they will not be likely significant effects (such that an appropriate assessment is not necessary), or will need to undertake an appropriate assessment to determine whether adverse impacts on the integrity of the New Forest SAC can be ruled out.
- 8.22 If the Competent Authority cannot conclude that there will not be any adverse impact on the integrity of the SPA/SAC the result would be:

- (1) The appeal must be refused under the Habitats Regulations unless there were imperative reasons of overriding public importance; and,
- (2) The 'titled balance' would not be engaged as set out in footnote 7 to paragraph 11 and paragraph 182 of the Framework.

## **9 THE LOCAL PLANNING AUTHORITY'S CASE**

- 9.1 At the CMC the inspector identified the main issues in this appeal are likely to be:
- The effects of the proposal on the landscape character and appearance of the area.
  - Whether the appeal proposal would cause harm to the spatial character of the area as a result of development taking place on land designated as countryside.
  - Whether the proposal would deliver an acceptable residential environment for future occupiers.
- 9.2 It is my recollection that the inspector confirmed that matters of design and layout would be included within main issue 3.
- 9.3 Having regard to the reasons for refusal it would appear to me that:
- Refusal reason (i) falls into main issue 2.
  - Refusal reason (ii) in respect of adverse visual effect on the countryside; and part of refusal reason (iii) in terms of the failure to respect the countryside character would fall within main issue 1.
  - Refusal reason (iii) in respect of a failure to respond positively to and be respectful of the key characteristics of the surrounding area and a lack of interconnected green/public spaces would fall either within main issue 1 or 3.
  - Refusal reason (iv) in respect of a failure to provide a high quality of design which respects and responds to the key characteristics of the area would fall within main issue 3.
- 9.4 Mr Russell-Vick set out at paragraph 6.3 the key landscape features and functions in considering the likely effects of developing the appeal site on the landscape, views, amenity of the adjoining open spaces and rights of way, and on the character and appearance of the site and local context. These are considered to be:

- 1) The north/north-west boundary formed by Oakcroft Lane and by the line of poplars is a distinct feature of the local landscape context. These elements, together with the subtle slope of the ground to the south, means that when seen from the north of the wider appeal site, the surface of the site is not visible, and undeveloped, the site appears to be well contained;
- 2) The dense vegetation along the eastern and southern site boundaries, as well as the open uses to the south and west promotes some sense of separation from the adjoining settlement which gives the appeal site a comparatively rural character;
- 3) A characteristic of the views from the north, from west of Peak Lane and east of Ranville Lane, back towards Stubbington, is how little of the built form of Stubbington is visible;
- 4) The character of Oakcroft Lane is an essentially rural one. The single line of poplars is a striking feature. Despite the density of the planting, views into the site from Oakcroft Lane are possible;
- 5) Crofton Cemetery, the churchyard of St Edmunds (Crofton Old Church) and the wooded open space within the appeal site, conjoin and combine to provide an evidently well-used and popular open space amenity. This open space appears to be used as part of local walking routes, together with Oakcroft Lane, the separated cycle/pedestrian link along Peak Lane, between Stubbington and Fareham, PRow 67 and Ranville Lane. Pressure for access is evident in the use of the boundaries of the main body of the appeal site for walking;
- 6) The main characteristics of the existing developed areas to the east and south of the appeal site are the informality of the layout; of curved roads and footways, with some shared surfaces; front gardens with front parking arrangements; and detached housing, with slightly denser housing arrangements along the shared surfaces. The buildings are 2 storeys in height, with a few 2.5 storey units on Summerleigh Walk. The retained former landscape of trees is the primary landscape feature, with occasional, small incidental grassed open spaces; and

- 7) The introduction of the construction and shortly the use of the Stubbington Bypass into the landscape will have a permanent effect on the landscape context. Its present under construction appearance is quite raw, but with time and its landscape matured, the road and traffic on it should be partially absorbed.

**LPA rfr (ii) - Scheme design at the edges of the Appeal Site and the visual effects on the adjoining countryside**

- 9.5 At paragraph 6.9 of Mr Russell-Vick's evidence, he concludes on this issue that:

*"Overall, I find that the scheme has failed to minimise the visual effects, and therefore causes adverse visual effect on the immediate countryside setting which is not necessary from the residential development of the site. This is as a result of inadequate landscape buffers which do not allow for the development built edge to be set far enough back from the site's boundaries to provide for the proper provision of landscape planting, as well as the failure to set the development back to an appropriate degree on the northern and western boundaries. The presence of 2.5 storey buildings on the northern, western and southern boundaries also unnecessarily increases the visual effects, as does the presence of almost continual roads around the development's perimeter with front parking and, in part, the 'additional' 206 units (over the Council's indicated 180 units), which gives rise to the presence of more buildings along the countryside edges than necessary. Reducing the numbers, even by a few along this edge, would allow for a more 'broken' built edge with more opportunity for landscaping."*

**LPA rfr (iii) – Scheme design of the Green Infrastructure and interconnectivity.**

9.6 At paragraph 6.10 of Mr Russell-Vick's evidence, he concludes on this issue that:

*"In respect of the Site Layout, the approach to the design of the external GI has limited vision and has failed, almost entirely, to integrate the proposals with the local context and missed clear and readily available opportunities to do so. Consequently, the scheme has demonstrated that it has not responded to its setting and context and would not be well integrated physically, socially and visually with the adjoining community and the locally important GI network."*

#### **LPA rfr (iv) - Scheme Layout and Design .**

9.7 At paragraph 6.11 of Mr Russell-Vick's evidence, he concludes on this issue that:

*"Overall, the layout design does not demonstrate any meaningful association with its context and has failed to respond to the attributes of its context. As the NDG sets out, good design does not need to mimic its surroundings and, in this case, the not all of the attributes of the locale are entirely positive, in this regard I have in mind the overwhelmingly detached nature of the development, with front gardens and drives onto the street, but the scheme should have responded to the sense of informality of the adjoining area and its well-landscaped form."*

9.8 On the basis of the conclusions of Mr Russell-Vick I consider those identified unacceptable effects of the development give rise to conflict with Policies CS14 and CS17 of the Core Strategy and Policies DSP6 and DSP40 of the LP2. I further consider that the elements of Policies CS17 and DSP40 that the development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.

9.9 These findings are not inconsistent with the Council's promotion of the land for up to 180 dwellings in the Local Plan Review. The draft allocation [see FBC.4] makes clear that as well as all other development plan policies being complied with [including D1], the development should, inter alia:

- a) *The quantity of housing proposed shall be broadly consistent with the indicative site capacity*
- e) *The scale, form, massing and layout of development to be specifically designed to respond to nearby sensitive features*
- f) *Building heights should be a maximum of 2 storeys*
- g) *A network of linked footpaths within the site and to existing PROW shall be provided*

9.10 Mr Russell-Vick has developed a Concept Plan for the site, to indicate how a scheme could be designed to address the Council's concerns at this appeal and to meet with Policy HA54 of the emerging Local Plan. Compared with the appeal scheme, the Concept Plan would increase the open space uses by some 0.8Ha whilst maintaining the net and gross developable densities.

9.11 At paragraph 6.12 of his evidence, he identifies its key features as including:

- An entrance open space and SW corner open space.
- A larger single open space, rather than two smaller, less impactful spaces. Central play space potentially, although this could be located in the SE corner open space
- A wider central green corridor providing a largely separated pedestrian route (from the roads) linking with the internal and external green spaces.
- An almost entirely separated external pedestrian and cycle looped route.

- Two access points to the footpath through the open space to the south and an enhancement of this route. A further access onto Oakcroft Lane and enhanced provision on Oakcroft Lane back into the existing residential area to integrate the new scheme and link communities. Retain and enhance the old route of Peak Lane into a pedestrian/cycle link, to join in with the existing popular provision along Peak Lane between Stubbington and Fareham.
- A more informal built arrangement, with more parking courts to improve and provide more variety of built form along the street scene.
- Focal architecture in key locations; not through the use of 2.5 storey detached and semi-detached houses, but through the use of short rows of mixed character terraced cottages.

9.12 For the reasons set out in the detailed evidence of Mr Russell-Vick assessment, the scheme proposals have, by the virtue of the design, failed to minimise the visual harm and have not been as sympathetic to the local surroundings of Stubbington and the countryside setting, as they should or could be. They do not function well in terms of the use of the GI within the layout and have failed to integrate successfully with the local GI and consequently socially with the local community, despite the clear opportunities to do so. The scheme proposals have also failed to establish a strong sense of place, through the scheme layout and/or the provision of attractive open space and successful GI.

9.13 Consequently, the proposals conflict with the objectives of Paragraphs 126, 130 and 174(b) and do not accord with the requirements of the NDG or local plan policies CS14, CS17, DSP6 and DSP40 (ii) and (iii).

## **10 PLANNING BALANCE**

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

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

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

10.3 The approach detailed within the preceding paragraph, has become known as the 'tilted balance' in that it tilts the planning balance in favour of sustainable development and against the Development Plan.

### **Harms**

10.4 Based on the evidence of Mr Russell-Vick, as summarised by me in Chapter 9 above, I have found that the development proposals have, by the virtue of the design, failed to minimise the visual harm and are not sympathetic to the local surroundings of Stubbington and

the countryside. They do not function well in terms of the use of the GI within the layout and have failed to integrate successfully with the local GI and consequently socially with the local community, despite the clear opportunities to do so. The scheme proposals have also failed to establish a strong sense of place, through the scheme layout and/or the provision of attractive open space and successful GI. Consequently, the proposals conflict with the objectives of paragraphs 126 and 130 of the Framework and do not accord with the requirements of the NDG.

10.5 In respect of local policies relevant to the main issues, I consider that the appeal scheme fails to comply with the requirements of the following Development Plan policies.

10.6 Policy CS14 (Development Outside of Development Boundaries) which seeks to protect the countryside, outside development boundaries, from development which would adversely affect its landscape character, appearance and function. In the assessment of Mr Russell-Vick, whilst there will inevitably be some adverse effect on the adjoining countryside through the development of this site, the scheme proposals fail to minimise the adverse effects.

10.7 Policy CS17 (High Quality Design) which requires that all development, buildings and spaces will be of a high quality and proposals will need to demonstrate, inter alia, that they have responded positively to key characteristics of the area. As set out in the evidence of Mr Russell-Vick, he considers that the scheme proposals are not of high quality and have not responded positively to key characteristics of the area.

10.8 Policy DSP6 (New Residential Development Outside of the Defined Urban Settlement Boundaries) of DSP 2, which, in seeking the protection of the character, appearance and function of the landscape, requires that there will be a presumption against new residential development outside of the defined urban settlement boundaries. For the same reasons given in respect of Policy CS14, the scheme fails to accord with this policy too.

10.9 Finally, Policy DSP40 (Housing Allocations), sets out that where it can be demonstrated that the Council does not have a five year housing land supply, additional housing sites may be permitted outside the urban area boundary, where (ii) proposals can be well integrated with the neighbouring settlement and (iii) sensitively designed to reflect the character of the neighbouring settlement and to minimise adverse impact on the countryside. For the same reasons given in respect of Policies CS14 and CS17, the scheme fails to accord with this policy too.

10.10 Therefore, to summarise the conflict with planning policy, I consider those adverse effects of the development give rise to conflict with Policies CS14 and CS16 of the Core Strategy and Policies DSP6 and DSP40 of the LP2 and therefore with the Development Plan as a whole. There would also be conflict with paragraphs 126, 130 and 174(b) of the Framework and the development does not accord with the requirements of the NDG.

10.11 I consider that the elements of Policies CS14 and CS17 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that the greatest weight should be attached to the conflict with the development plan that I have identified. This follows the approach adopted by Inspectors in the various appeals that I have referred to.

10.12 The Council do not consider that there would be any harm to the setting of a nationally designated heritage asset in the area, although Historic England and third parties consider there would be some harm. Even if one were to agree with the views of Historic England then that harm would be less than substantial and at the lower end of that spectrum. On this basis I consider that harm would be outweighed by the social and economic benefits arising from the development, as set out below.

10.13 Turning to the matter of Habitats, as set out in Chapter 8, although not part of the Council's case, PINS is the competent authority and as a matter of law will need to be satisfied, notwithstanding NE's position, either that they will not be likely significant effects (such that an appropriate assessment is not necessary), or will need to undertake an appropriate assessment to determine whether adverse impacts on the integrity of the New Forest SAC can be ruled out. If it cannot conclude that there will not be any adverse impact on the integrity of the SPA/SAC the result would be:

- (1) The appeal must be refused under the Habitats Regulations unless there were imperative reasons of overriding public importance; and,
- (2) The 'tilted balance' would not be engaged as set out in footnote 7 to paragraph 11 and paragraph 182 of the Framework.

### **Benefits**

10.14 In Chapter 11 of the Appellant's Statement of Case a number of benefits are identified under the headings 'Economic', 'Social' and 'Environmental'.

10.15 In terms of economic benefits, I acknowledge that appeal scheme would be likely to provide employment opportunities and economic benefits to the area in terms of job creation and increased local spending. I attach moderate weight to these factors.

10.16 In respect of social benefits, the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. In these respects, the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support

economic growth. Taken together, I give those benefits substantial weight.

10.17 There would also be an increase in on-site open space but the poor quality of much of its environment means that minimal weight can be afforded to this factor.

10.18 It is accepted that the calculations provided in the Biodiversity Impact Calculator (revised in September 2020) will provide a net gain of 40.32 in habitat units and 9.18 in hedgerow units which is a 91.46% and 64.40% gain respectively when calculated using the DEFRA Metric 2.0. As such, a significant measurable biodiversity net gain could be delivered as part of the Appeal Scheme. I attach moderate weight to this issue. There would also be a net reduction in nitrates, to which I also afford moderate weight.

10.19 Although I give a number of the benefits above substantial weight, in my judgement, it would fall well short of the weight attributable to the harm that has been identified by Mr Russell-Vick. Furthermore, it is likely that the benefits of the proposal could be achieved without the harms (or at least the degree of harm) that this proposal would cause, were the proposal to be redesigned and the number of units reduced.

### **Conclusions and Planning Balance**

10.20 Assuming that the habitats issue is capable of being overcome; and either PINS concludes there is no heritage harm or it is outweighed by public benefits, then I accept that the tilted balance applies in this case.

10.21 Despite these identified benefits, the identified conflicts with the development plan, with particular reference to CS14 and CS17 and DSP40, are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.

10.22 As I have set out at 6.29, Having regard to the findings of the Inspectors in the recent Newgate Lane (North and South) and the Newgate Lane (East) appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 7 of the NPPF, since criterion (ii) seeks to ensure that new housing can be well integrated with the neighbouring settlement; and (iii) requires a sensitive design to reflect the character of the neighbouring settlement, it is consistent with the Framework, especially with the new emphasis towards high quality design. Accordingly, on the basis of the main issues in this case, any breach of policy DSP40 should be afforded considerable weight and a breach of CS17 afforded full weight.

10.23 I consider that the identified unacceptable harm could not be addressed through the imposition of reasonable planning conditions since this is a full application and not an outline application.

10.24 As made clear above, I have assessed all of the other material considerations in this case, including those benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

10.25 I accept that there is an emerging allocation for the site and it is likely to be possible to achieve many, if not all, of the benefits of this scheme without the harms (or at least the degree of harm) that this proposal would cause, were the proposal to redesigned and reduced in numbers. There is no reason why the emerging allocation cannot be a framework for achieving this, and Mr Russel-Vick's concept plan provides one potential realisation of this.

10.26 I therefore conclude that the appeal should be dismissed.