

**FAREHAM BOROUGH COUNCIL**

**Section 78, TOWN & COUNTRY PLANNING ACT 1990**

**STATEMENT OF CASE**

**FAREHAM BOROUGH COUNCIL  
(The LOCAL PLANNING AUTHORITY)**

**LAND EAST OF CROFTON CEMETERY AND  
WEST OF PEAK LANE, STUBBINGTON, FAREHAM  
HAMPSHIRE**

**Appellant: Persimmon Homes South Coast**

**LPA Ref: P/20/0522/FP**

**PINS/Ref: APP/A1720/W/21/3275237**

**21 July 2021**

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## 1.0 Introduction

- 1.1 This Statement of Case (SoC) sets out Fareham Borough Council's (the 'Council') case in respect of an appeal made by Persimmon Homes South Coast (the 'Appellant') against the Council's refusal of 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'* (the 'Appeal Development').
- 1.2 The Planning Inspectorate ('PINS') has confirmed that the Appeal will be heard via the Inquiry procedure with the inquiry lasting 8 days starting on 19<sup>th</sup> October 2021.
- 1.3 In advance of the inquiry, the Council will seek to agree one or more Statements of Common Ground and a Core Document list with the Appellant. It will also work with the Appellant to seek agreement on conditions and a Section 106.
- 1.4 The Council's evidence will address the reasons for refusal and will include reference to case law, appeal decisions and other materials relevant to its case.
- 1.5 This SoC is structured as follows:
- **Section 2 – Appeal Development:** Provides a description of the Appeal Development
  - **Section 3 – Appeal Site and Surrounding Area:** Provides a description of the Appeal Site and surrounding area
  - **Section 4 – Reasons for Refusal:** Describes the Reasons for Refusal
  - **Section 5 – Relevant Planning History:** Describes the previous planning application along with the outcome of the associated appeal
  - **Section 6 - Relevant Policy Framework:** Sets out the relevant national and local policy framework
  - **Section 7 – Weight to be Afforded to adopted Development Plan Policies:** Sets out how adopted policies should be treated in the absence of a five-year housing land supply.
  - **Section 8 – The Council's Case:** Sets out the Council's case with specific regard to the reasons for refusal, the development plan policy conflicts and the planning balance.
  - **Section 9 – Planning Conditions and s106:** Addresses conditions and Section 106 planning obligations.

- **Section 10 – Witnesses:** Sets out the Council’s anticipated Expert Witnesses.

1.6 At the time of the LPA completing the drafting of the SoC it has become apparent that the Government has just issued a new NPPF and that the February 2019 NPPF has been cancelled. The LPA have not had the time to review the impact, if any, of the new NPPF on the appeal scheme. If it becomes apparent that there is a material change, insofar as the appeal is concerned, the LPA will update its SoC accordingly, and in good time before the exchange of proofs.

## **2.0 Appeal Development**

2.1 The Appeal Development, as modified, is described on the decision notice dated 18<sup>th</sup> February 2021 as follows:

*“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’.*’

2.2 The application proposal, which is submitted in full detail comprises 206 dwellings, to be constructed on the southern part of the site, south of Oakcroft Lane. The dwellings comprise a mix of: 4 x 1 bedroom flats, 64 x 2 bedroom houses, 113 x 3 bedroom houses and 25 x 4 bedroom houses. Public open space will be created within the site with a local equipped area of play (LEAP) created to the southern part of the site.

2.3 A new junction to Peak Lane which would form the access road to the development site would be located approximately 175 metres to the north of the existing access from Mays Lane/ Peak Lane onto Oakcroft Lane. The first 120 metres of Oakcroft Lane, to the west of Mays Lane/ Peak Lane will be converted into a no through road, with access to the remainder of Oakcroft Lane being made via the proposed new access road.

2.4 The residential development would comprise a mixture of two storey and two and half storey dwellings and one two storey block of flats. The proposal includes car parking provision to accord with the Council’s Adopted Car Parking Standards, with all car parking allocated to each dwelling and a further 41 visitors’ spaces provided adjacent the highway throughout the development.

2.5 The land to the north of Oakcroft Lane is proposed for use as biodiversity enhancement space and used to support the wider Solent waders and Brent goose network. The land is to be transferred to the Borough Council to ensure its long-term purpose as mitigation land and, it is envisioned, would be secured through a Section 106 legal agreement.

2.6 The planning application was supported by a suite of technical documents and plans comprising: Planning Statement, Design and Access Statement, Biodiversity Impact Calculator, Ecological Impact Assessment, Ecological Management Plan, Shadow Habitats Regulations Assessment, Tree Protection Plan and Arboricultural Impact Assessment and Method Statement, Contaminated Land Assessment, Environmental Noise Impact Assessment, Transport Assessment and Travel Plan, Landscape Strategy Plan, Landscape and Visual Impact Assessment, Archaeological Desk-Based Assessment, Written Scheme of Investigation for Archaeological Investigation, Flood Risk and Surface Water Drainage Strategy, together with detailed plans and elevations of all the proposed dwellings and other buildings, tenure plan, building heights plan, boundary treatment plan and vehicle tracking diagrams.

### **3.0 APPEAL SITE AND SURROUNDINGS**

- 3.1 The 'Appeal Site' comprises the land edged-red on the submitted Site Location Plan.
- 3.2 The application site is located at the northern end of the village of Stubbington, and currently forms two arable pieces of farmland divided by Oakcroft Lane that runs east – west between the two parcels of land.
- 3.3 The southern parcel of land is bounded by residential development to the east, with a line of protected trees providing an existing buffer between the site and the residential properties to the east. The southern boundary comprises additional residential development (Marks Tey Road), with an area of woodland and a public right of way forming a break between these two areas. The western boundary comprises Crofton Cemetery which is separated from the site by a mature hedgerow. The northern part of the western boundary forms part of Oakcroft Lane, divided by a drainage ditch and a mature line of poplar trees. The northern boundary comprises Oakcroft Lane where the mature line of poplar trees continues along the line of the road.
- 3.4 The northern parcel of land is bounded by Oakcroft Lane to the south, and Peak Lane to the east. To the north of this piece of land the open arable field continues although this will be dissected by the Stubbington By-pass for which the construction works have commenced. To the west of the site lies an ecological enhancement area owned by Hampshire County Council, created as mitigation for the Stubbington by-pass route.
- 3.5 The two parcels of land are predominantly flat, with Oakcroft Lane set at a slightly lower level than the site to the south. The northern parcel of land comprises a drainage ditch/watercourse that broadly runs along the northern side of Oakcroft Lane and contributes towards connecting the new habitat mitigation area to the west of the site to waterbodies to the east of Stubbington. In addition to the provision of the biodiversity enhancement space, the removal of the land for agricultural use will provide nitrate mitigation to support the development proposal.
- 3.6 Stubbington Village is a sustainable settlement comprising a wide range of services and facilities including a well-established village centre, primary and secondary schools, and employment opportunities. The village is surrounded by undeveloped countryside, designated as Strategic Gap, and whilst traffic congestion through the village can be severe at peak times, the implementation of the Stubbington by-pass, which is currently under construction and is anticipated to be completed in the next 12 months should contribute towards alleviating the traffic congestion.

## 4.0 Reasons for Refusal

### Officer Recommendation

- 4.1 The planning application (LPA ref. P/20/0522/FP) was subject of an officer recommendation for permission as detailed in the Committee Report [FBC.1] and Update Report [FBC.2] dated 17<sup>th</sup> February 2021.

### Planning Committee Decision

- 4.2 The Planning Committee resolved to refuse planning permission at the planning committee on for the reasons set out below.

### Reasons for Refusal

- 4.3 The decision of the Local Planning Authority to refuse planning permission was issued on 25<sup>th</sup> November 2021. The reason for refusal is 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.*

4.4 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.'*

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

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

4.7 It will also be necessary to secure (at least) Nitrogen neutrality through either a legal agreement or planning condition[s].

4.8 Finally, in respect of the issue set out in the last sentence of refusal reason iv) [size of some house types] the Council understand that this can be achieved through the moving of some internal walls within those house types. The Council expects the Appellant to provide amended plans to deal with matter and at the present time the Council are of the view that these plans can be accepted under the *Wheatcroft* principle.

## 5.0 Relevant Planning History

### The 2019 Planning Application

- 5.1 Persimmon Homes South Coast submitted a planning application (P/19/0301/FP) for:

*Development comprising 261 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, public open space and associated works*

- 5.2 The application was refused, in line with the officer recommendation, for the following reasons:

*The development would be contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS17, CS18, CS20, and CS21 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP5, 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.*

*v) the proposed development involves development that involves significant vehicle movements that cannot be accommodated adequately on the existing transport network. Insufficient information has been provided to demonstrate that the development would not result in a severe impact on road safety and operation of the local transport network.*

*vi) the proposed access arrangement onto Peak Lane is inadequate to accommodate the development safely. This would result in an unacceptable impact on the safety of users of the development and adjoining highway network.*

*vii) the proposal fails to demonstrate that the development would be accessible with regards to public transport links and walking and cycling routes to local services and facilities.*

viii) *the development proposal fails to provide sufficient provision of, or support for, sustainable transport options. This would result in a greater number of trips by private car which will create a severe impact on the local transport network and the environment.*

ix) *inadequate information has been provided to assess the impact of the proposed works on water voles on site and any measures required to mitigate these impacts such as the provision of enhanced riparian buffers. In addition, there is insufficient information in relation to their long-term protection within the wider landscape by failing to undertake any assessment of the impact of the proposals on connectivity between the mitigation pond created as part of the Stubbington Bypass Scheme and the wider landscape. The proposal fails to provide appropriate biodiversity enhancements to allow the better dispersal of the recovering/reintroduced water vole population in Stubbington.*

x) *insufficient information has been submitted in relation to the adverse impacts of the proposals on the Solent Waders and Brent Goose Strategy Low Use Site and Secondary Support Area and any mitigation measures required to ensure the long-term resilience of these support networks.*

xi) *the development proposal fails to provide adequate wildlife corridors along the boundaries of the site to ensure the long-term viability of the protected and notable species on the site and avoidance of any future conflicts between the residents and wildlife (e.g. badgers damaging private garden areas) due to the lack of available suitable foraging habitat.*

xii) *in the absence of sufficient information, it is considered that the proposal will result in a net loss in biodiversity and is therefore contrary to the NPPF which requires a net gain in biodiversity.*

xiii) *the development would result in an unacceptable impact on a number of protected trees around the periphery of the site.*

xiv) *the submitted flood risk assessment fails to assess the impact of climate change on the development and therefore fails to demonstrate that the development is appropriately flood resistant and resilient.*

xv) *the development would fail to preserve, and would result in less than substantial harm to, the historic setting of the Grade II\* Listed building Crofton Old Church.*

xvi) *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.*

xvii) *the development proposal fails to secure an on-site provision of affordable housing at a level in accordance with the requirements of the Local Plan.*

*xviii) in the absence of a legal agreement to secure such, the proposal would fail to 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.*

*xix) the development proposal fails to provide adequate public open space. In addition, in the absence of a legal agreement securing provision of open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met. xx) 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.*

*xxi) in the absence of a legal agreement to secure such, the proposal would fail to provide a financial contribution towards education provision.*

## **6.0 Relevant Policy Framework**

- 6.1 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 the SoC sets out the relevant planning policy framework for the consideration of this appeal.
- 6.2 The policies detailed within the Council's reasons for refusal (RfR) are detailed within this Section. Where the policies are considered particularly relevant to this Appeal they are outlined in more detail.

## **The Development Plan**

- 6.3 The development plan relevant to the consideration of this appeal comprises the following documents:
- Local Plan Part 1: Fareham Borough Core Strategy– Adopted 4th August 2011
  - Local Plan Part 2: Development Sites and Policies– Adopted 8th June 2015
  - Local Plan Part 3: The Welborne Plan – Adopted June 2015
- 6.4 The development plan policies that are referenced in the Council's Planning Committee report as being relevant for the Application are as follows:

### **Adopted Fareham Borough Core Strategy**

CS2: Housing Provision

CS4: Green Infrastructure, Biodiversity and Geological Conservation

CS5: Transport Strategy and Infrastructure

CS6: The Development Strategy

CS11: Development in Portchester, Stubbington & Hill Head and Titchfield

CS14: Development Outside Settlements

CS15: Sustainable Development and Climate Change

CS16: Natural Resources and Renewable Energy

CS17: High Quality Design

CS18: Provision of Affordable Housing

CS20: Infrastructure and Development Contributions

CS21: Protection and Provision of Open Space

CS22: Development in Strategic Gaps

### **Adopted Development Sites and Policies**

DSP1: Sustainable Development

DSP2: Environmental Impact

DSP3: Impact on Living Conditions  
DSP5: Protecting and Enhancing the Historic Environment  
DSP6: New Residential Development Outside of the Defined Urban Settlement Boundaries  
DSP13: Nature Conservation  
DSP14: Supporting Sites for Brent Geese and Waders  
DSP15: Recreational Disturbance on the Solent Special Protection Areas  
DSP40: Housing Allocations

**Other Documents**

Residential Car and Cycle Parking Standards Supplementary Planning Document (November 2009)  
Design Guidance Supplementary Planning Document excluding Welborne (Dec 2015)  
Planning Obligation SPD for the Borough of Fareham (excluding Welborne) (April 2016)

- 6.5 The policies found to be breached in the Council's reasons for refusal, are 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 [LPP2]. These are addressed in more detail below.

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

- 6.6 The Local Plan Part 1 (LLP1) was adopted on 4th August 2011. The following policies were listed in the Reasons for Refusal and are relevant to the determination of this appeal:

- 6.7 **Policy CS2** (Housing Provision) states:

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

Housing will be provided through;

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

*The supply of sites will be kept up-to-date through a regular review of the Strategic Housing Land Availability Assessment which will identify sites. Those that are allocated will be done so through the Site Allocations and Development Management Development Plan Document. The Annual Monitoring Report will inform the pace of housing delivery and update the housing trajectory.*

*Development will achieve a mix of different housing sizes, types and tenures informed by the Housing Market Assessment and the Council's Housing Strategy.'*

6.8 **Policy CS4** (Green Infrastructure, Biodiversity and Geological Conservation) states in part:

*'Habitats important to the biodiversity of the Borough, including Sites of Special Scientific Interest, Sites of Importance for Nature Conservation, areas of woodland, the coast and trees will be protected in accordance with the hierarchy of nature conservation designations.*

*In order to prevent adverse effects upon sensitive European sites in and around the Borough, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development. This will include a suite of mitigation measures, with adequate provision of alternative recreational space for access management measures within and around the European sites and mitigation for impacts on air quality due to road traffic, supported by developer contributions where appropriate. **Development likely to have an individual or cumulative adverse impact will not be permitted unless the necessary mitigation measures have been secured.**' (emphasis added)*

6.9 **Policy CS6** (The Development Strategy) states in part:

*'Development will be focused in:*

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

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

*Opportunities will be taken to achieve environmental enhancement where possible.*

***Development which would have an adverse effect on the integrity of protected European conservation sites which cannot be avoided or adequately mitigated will not be permitted.*** (emphasis added)

6.10 **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)

6.11 **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.'*

6.12 **Policy CS18** (Provision of Affordable Housing) states:

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

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

*Development proposals will be required to provide a mixture of dwelling types, sizes and tenures reflecting the identified housing needs of the local population. Where development viability is an issue, developers will be expected to produce a financial assessment in which it is clearly demonstrated at the maximum number of affordable dwellings which can be achieved on the site.*

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

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

6.13 **Policy CS20** (Infrastructure and Development Contributions) states in part:

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

6.14 **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.'*

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

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

6.16 **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.'*

6.17 **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)

6.18 **Policy DSP13** (Nature Conservation) states in part:

*'Development may be permitted where it can be demonstrated that;*

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

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

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

**6.19 Policy DSP14** (Supporting Sites for Brent Geese and Waders) states:

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

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

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

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

**6.20 Policy DSP15** (Recreational Disturbance on the Solent Special Protection Areas (SPA) states:

*'In Combination Effects on SPA*

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

*Direct Effects on Special Protection Areas*

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

6.21 **Policy DSP40** (Housing Allocations) states in full:

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

*Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site is listed in Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.*

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

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

- i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii) The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*

- iii) *The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps.*
- iv) *It can be demonstrated that the proposal is deliverable in the short term; and*
- v) *The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

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

- 6.22 The Welborne Plan (LPP3) is the third part of the Council's Local Plan and was adopted in June 2015.
- 6.23 The 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. It is not considered to be relevant to the determination of this appeal.

### **Other Material Policy Considerations**

- 6.24 Other material policy considerations relevant to the determination of this planning appeal include the following documents:
- i. National Planning Policy Framework (2019)
  - ii. Fareham Publication Local Plan Revised 2037
  - iii. Fareham Landscape Assessment (2017)
  - iv. Planning Obligations Supplementary Planning Document for the Borough of Fareham (excluding Welborne) (2016)
  - v. Definitive Strategy - 'Solent Recreation Mitigation Strategy' (December 2017)
  - vi. Hampshire Local Transport Plan (2011-2031)

### **Emerging Local Plan**

- 6.25 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).
- 6.26 At a meeting of the Council's Executive on 1<sup>st</sup> February 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.

6.27 At the Council's Planning & Development Scrutiny Panel on 25<sup>th</sup> May 2021 the Revised Publication Local Plan was considered. The revised Local Development Scheme was passed at Executive on 7<sup>th</sup> June 2021 and Full Council on 10<sup>th</sup> June 2021. The consultation period is from 18<sup>th</sup> June – 30<sup>th</sup> July 2021.

6.28 There is draft allocation (HA54) [see FBC.4] is for the appeal site. This indicates an indicative yield of 180 dwellings. The draft allocation set out the following requirements:

*Proposals should meet the following site-specific requirements:*

- a) The quantity of housing proposed shall be broadly consistent with the indicative site capacity; and*
- b) Primary highway access should be via Peak Lane; and*
- 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*
- d) Land to the north of Oakcroft Lane shall be retained and enhanced to provide Solent Wader & Brent Goose habitat mitigation in accordance with Policy NE5; 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; and*
- j) As there is potential for previously unknown heritage assets (archaeological remains) on the site, an Archaeological Evaluation (in accordance with policy HE4) will be required; and*
- k) A Construction Environmental Management Plan to avoid adverse impacts of construction on the Solent designated sites shall be provided; and*

- l) Infrastructure provision and contributions including but not limited to health, education and transport shall be provided in line with Policy TIN4 and NE3.*

6.29 In respect of any proposals on allocated sites within the emerging LP then draft policy **D1 High Quality Design and Place Making** would be relevant. It 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:*

- i. Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and*
- ii. Identity - where proposals create places that are attractive, memorable, distinctive and of strong character; and*
- iii. 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.*

## 7 Proper Approach to Determining this Appeal

### The Section 38(6) test

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

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

7.2 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.5] 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.6], 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.

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

### Housing Land Supply

7.4 At the time of submitting this SoC, the Council’s most recently published (February 2021) housing land supply position statement is included as appendix FBC.7 to this statement.

- 7.5 The Council notes the Appellant's position on five-year HLS and that at 7.103 of their SoC they consider the updated land supply position to be amended to between 3.39 and 3.66 years.
- 7.6 At the time of preparing this SoC, it can be confirmed that the Councils latest position on housing land supply is that it has an identified supply of 3.57 years.
- 7.7 This latest figure falls within the range set out by the appellant. Regardless of the precise shortfall, it is accepted that the shortfall is material on either basis. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.
- 7.8 The Council will seek common ground on these issues to limit and focus the issues in dispute. The Council will also seek common ground with the Appellant on issues concerning affordable housing. If necessary, the Council will provide evidence to the inquiry to support its housing land supply position to the extent required in light of the common ground reached.
- 7.9 In addition, the Council will highlight the actions it is taking to improve the housing land supply position in its area, including promoting an emerging local plan which is projected to exceed the housing requirement by over 10% in the period 2021-2037.

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

- 7.10 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. 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 (CD35) ("*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."*

- 7.11 In the case of the *Land West of Old Street, Stubbington* (December 2018: 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.”*

7.12 In the *Land East of Posbrook Lane, Titchfield* appeal decision [FBC.9] dated 12 April 2019, referred to in the *Newgate Lane* 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 in respect of Policy DSP40 however, he concluded at Paragraph 68 that:

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

7.13 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 errs on the side of caution and considers the Appellants housing figures better represented the current situation. However, notwithstanding this fact, he concluded 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.”*

7.14 Finally, in the relatively recent case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham* (Appeal Refs. APP/A1720/W/20/3252180 and 85) provided at FBC.11, as with other recent appeals, Inspector Jenkins did not see a need to determine the precise extent of the shortfall, albeit he was of the view that a shortfall in housing land supply would persist for some significant time to come.

7.15 The matter of weight to be given to Policy DSP40 was considered in his [Inspector Jenkin’s] Planning Balance section at paragraphs 108 to 110 of his decision letter and due to their relevance, are repeated 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).*

7.16 Having regard to these decisions, the Council will submit that, regardless of whether the appellant or Council's assessment of housing supply is accepted, the breach of policy DSP40 (which is outlined below) should be afforded *at the very least* considerable weight.

**If the presumption in favour of sustainable development is applied, then how should NPPF Paragraph 11(d) be applied?**

7.17 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Mr Justice Holgate in **Monkhill Ltd v SSHCLG** [2020] P.T.S.R. 416 at [39] and [45] (upheld on appeal [2021] EWCA Civ 74) (FBC.12).

7.18 As set out in the decision notice and explained below, the proposal does not accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.

7.19 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.

7.20 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.'*

7.21 There are two tests set out at NPPF 11(d). It is the correct approach (see *Monkhill*) to apply these tests sequentially, the first test being whether there are policies within the Framework which provide a clear reason for refusing the Appeal Development. The Council considers that there are policies of this type in the Framework, as referenced at footnote 6 of paragraph 11(d) ('habitats sites' and 'designated heritage assets'). In respect of 'habitats sites' which are relevant to the determination and subject to appropriate controls through conditions or a legal agreement it is considered that these matters can

be satisfactorily addressed.

- 7.22 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. Whilst the Council have not alleged any harm to the setting of the Grade II\* listed church, the views of Historic England and some third parties are that there is some harm to the setting of two listed buildings. As a result, the decision maker needs to consider this matter as set out above. It is the Council's position that even if the views of Historic England are relied upon then it is clear that the degree of alleged harm is 'less than substantial' and at the lower end of the scale to the extent that the identified harm would be outweighed by the previously social and economic benefits arising from the development.
- 7.23 In respect of paragraph 11 d) ii., the Council's position is that the Appeal Development fails the 11 d) ii. test because the adverse effects of the Appeal Development, including the breach of development plan and emerging policies, would significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the NPPF as a whole.
- 7.24 The Council's position is therefore that, even applying the tilted basis, the planning balance falls in favour of dismissing the Appeal.

## 8.0 The Local Planning Authority's Case

### Reason for Refusal

8.1 The full reasons for refusing planning permission are set out at paragraph 4.3 above. However as confirmed in paragraph 4.6 and 4.8 it is considered that refusal reasons v) to x) can be addressed through either a legal agreement or planning condition[s] and that the last sentence of refusal reason iv) [size of some house types] can be achieved through the moving of some internal walls within those house types. On this basis the Council's main case will be set out on the remaining elements of the reason for refusal. Omitting those policies not directly relevant to these elements:

*The development would be contrary to Policies CS2, CS4, CS6, CS14..., CS17... and CS21 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP1..., DSP6... 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.....*

8.2 These reasons can be set into three distinct planning considerations; (1) the application of policy DSP40; (2) the impact of the proposed scheme on the character and appearance of the countryside; and, (3) whether the site design and layout responds positively to the key characteristics of the locality, and would deliver a high quality housing scheme – including consideration of the adequacy of green infrastructure; the interconnection, or otherwise, of green/public spaces; and whether the proposal responds appropriately to the edge of settlement location.

### Issue 1 - Application of Policy DSP40

8.3 The Council will demonstrate that the Appeal Development conflicts with LPP1 Policies CS2 and CS6 which provide the framework for new housing development and define the appropriate locations for new residential

development as being within the settlement boundaries. Development outside of settlement boundaries and within the countryside, such as at the appeal site, is strictly controlled except for certain circumstances set out in Local Plan Policy CS14, none of which apply to the Appeal Development.

8.4 LPP2 Policy DSP40 allows for additional residential development in the context of a 5YHLS shortfall subject to various criteria being met. The criteria are as follows:

- 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;
- iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the strategic gaps;
- iv. It can be demonstrated that the proposal is deliverable in the short term; and
- v. The proposal would not have any unacceptable environmental, amenity or traffic implications.

8.5 The Council will demonstrate that the Appeal Development does not meet all of the criteria set out in Policy DSP40. Criterion 'i' is met. However, as the Appeal Development fails to respond positively to the edge of settlement location - and is not well related to the existing urban settlement boundaries – the Council will demonstrate that criterion 'ii' is not met. The Appeal Development would also fail the test at criterion 'iii' due to the landscape and visual harm to the character to the countryside as described below.

8.6 The Appellant has advised that the Appeal Development is deliverable in the short term. It will be for them to substantiate this at the Inquiry. In terms of meeting criteria 'iv' the Council accepts that appropriate mitigation has been identified for Brent geese and waders so the delivery of housing in the short term should be possible, and therefore the Council is satisfied that criterion 'iv' can be met. Finally, subject to appropriate conditions or planning obligations, the Council accept that the Appeal Development would not have unacceptable environmental and traffic implications in relation to the other reasons for refusal and therefore satisfies the final test at criterion 'v'.

## **Issue 2 - Impact on the character and appearance of the locality**

8.7 The Council will seek to demonstrate through landscape and visual evidence that the scale and location of the proposed dwellings within the appeal site and access road would have an adverse impact on the immediate countryside setting around the site, in particular the visual amenity and character of the Crofton Cemetery, upon users of Oakcroft Lane and Peak Lane, as well as users of some Public Rights of Way to the north of the appeal site and on the local landscape generally.

### **Issue 3 - Failure of the site layout to respond positively to the key characteristics of the locality**

- 8.8 The Council will set out the key characteristics of the locality and will seek to demonstrate through evidence the extent and degree to which the form, layout and scale of the proposed development would fail to respond positively to these characteristics, including the rural setting of the Crofton Cemetery, the rural character of the boundary with and context of Oakcroft Lane, the wooded boundary of the settlement edge of Stubbington to the east and the informal and well-landscaped character of the adjoining residential areas.
- 8.9 The Council will show by reference to the more informal pattern of development in the locality, especially by reference to the housing to the south, and the regimented grid pattern of the proposed housing layout gives rise to a low quality scheme that fails to respect the surrounding development.
- 8.10 The Council will also show that proposed development fails to integrate satisfactorily with the existing surrounding development by failing to provide high quality connections that feed into the scheme along with the effect of the road system surrounding the whole of the development which provides a barrier to integration.
- 8.11 As is demonstrated by the draft allocation in the emerging Local Plan, the Council considers that it is likely to be possible to bring forward a smaller, high quality housing scheme on the Appeal Site which would: respond positively to the key characteristics of the local area; avoid, or at least minimise, adverse landscape and visual effects; provide adequate green infrastructure; relate well to the existing urban settlement boundaries; and which would successfully integrate with the adjoining green/public spaces.

### **Planning Balance**

- 8.12 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".*
- 8.13 Paragraph 11 of the NPPF clarifies the presumption in favour of sustainable development in that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
- the application of policies in the Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or

- 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.
- 8.14 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.
- 8.15 The Council will demonstrate for the reasons outlined above, that the proposal would give rise to an adverse visual impact on the countryside to the north and west of the site; would fail to respond positively to the key characteristics of the countryside to the north and west along with its edge of settlement location; would provide limited green infrastructure and poorly connected green/public areas; would fail to integrate well with the surrounding development; that the layout is not considered to be in keeping with the surrounding development and for these reasons it would not represent high quality development.
- 8.16 The Council consider those unacceptable effects of the development give rise to conflict with Policies CS14, CS17 and CS21 of the Core Strategy and Policies DSP6 and DSP40 of the DSP. The Council consider that the elements of these policies 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. Therefore, the Council consider that great weight should be attached to the conflict with the development plan that has been identified.
- 8.17 The Council also considers that the proposal is contrary to Policies D1 and HA54 in the emerging Local Plan, which also weighs against the proposal.
- 8.18 There would be significant social and economic benefits arising from the construction and occupation of up to 206 dwellings, including the short-term boost to the supply of market and affordable homes in the Council’s area. Whilst the Council do not consider there would be some harm to the setting of the nationally designated heritage assets in the area, some parties, including Historic England do. The Council consider that even taking their views on board, it is considered that harm would be less than substantial and would be outweighed by the previously mentioned social and economic benefits arising from the development.
- 8.19 The Council are of the view that the unacceptable harm identified above could not be addressed through the imposition of reasonable planning conditions. The Council has assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance the Council 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.

8.20 For these reasons the Council will conclude that the appeal should therefore be dismissed and planning permission refused.

## **9 Planning Conditions and Section 106**

### **Conditions**

- 9.1 The Council and the Appellant will seek to agree a list of planning conditions in the Statement of Common Ground.

### **Section 106 Agreement**

- 9.2 The Council and the Appellant will seek to agree a draft unilateral undertaking in advance of the Inquiry taking account of the information on the Decision Notice referred to at paragraphs 4.6 and 4.7 of this statement.

## **10.0 Witnesses**

10.1 The Council expects to call upon two expert witnesses at the Inquiry to deal with the following matters unless resolved through negotiation of Statements of Common Ground such that evidence does not need to be presented:

- Landscape and urban design matters
- Planning matters (including planning policy issues, heritage considerations, five-year housing land supply, and Habitats and other ecological matters)