

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

**AND IN THE MATTER OF
LAND EAST OF CROFTON CEMETERY,
STUBBINGTON, FAREHAM.**

**OPENING SUBMISSIONS
ON BEHALF OF
THE APPELLANTS**

1. These Opening Submissions are made on behalf of the Appellants in respect of the appealed refusal by Fareham BC [‘the Council’] of a detailed application for 206 dwellings, open space and associated development [‘the scheme’] on land east of Crofton Cemetery and west of Peak Lane, Stubbington, Fareham [‘the site’].
2. The site lies outside but immediately adjacent to the out-of-date settlement boundary of Stubbington, a sustainable settlement for additional housing growth, and in a sustainable location for access to services and facilities. It is bounded on two sides by existing housing, and on a third by Crofton Cemetery. On the north it is bounded by Oakcroft Lane, along which is a screen of mature poplars.
3. The site is proposed to be allocated in the emerging Local Plan for ‘around’ 180 dwellings. As such, the Council acknowledges that the site is suitable for housing development of broadly that order. The appeal scheme is only 26 dwellings more than the proposed allocation.

4. In addition, the Council acknowledges that it cannot demonstrate the required 5 year housing land supply and (subject to Habitats issues) paragraph 11(d) of the NPPF is engaged. There is no highway, amenity, biodiversity or historic environment objection. By contrast, there is an acknowledged and pressing need for housing and for affordable housing in the Borough.
5. Despite an officer recommendation for approval, members refused the application for four operative reasons (and a further five able to be overcome by s.106/conditions). Of the four operative reasons, one part of RRef 5 (space standards) has been resolved by the substitution of certain plans showing internal reconfiguration of certain units.
6. This leaves the Council's case for rejecting these proposals resting on the following allegations:
 - (i) Conflict with adopted policies preventing development outside the settlement boundary;
 - (ii) 'Adverse visual effect on the immediate countryside setting around the site';
 - (iii) Failure to 'respond positively to and be respectful of the key characteristics of the area', 'limited green infrastructure' and 'lack of interconnected green/public spaces'; and
 - (iv) A 'cramped layout'.
7. These will now be explored in evidence, but it is immediately apparent that they fall into two parts: an 'in principle' objection to development outside the settlement boundary, and a group of 'scheme specific' objections arising from the form of the development proposed. F
8. From the foregoing, that first, in-principle, objection [RRef (i)], is not able to be maintained. The Council's 2012 development plan policies in respect of its spatial strategy are out of date in their own terms, being predicated on non-NPPF compliant assessments of housing need. In turn, then, the settlement boundaries on which they are predicated are out of date. Strategic policies CS2, CS6 and DSP6 are all out of date. Notably CS22 (Gap) is not cited, as it is acknowledged that the site, although in the Gap, is able to be developed without offending the tests in that policy.

9. In addition, as the Council cannot demonstrate a 5 year housing land supply, policy DSP40 is engaged, which operates as an exceptions policy to the otherwise restrictive development plan policies. It has its own five criteria, which operate as has been found by recent Inspectors (but must be the case in any event) in a less restrictive manner than the policies to which they are exceptions. Compliance with these criteria render a scheme *in conformity with* the development plan ‘taken as a whole’, and thus benefitting from the first part of s.38(6) and para. 11(c) of the NPPF. But as one of (arguably *the*) ‘most important’ policy for the determination of the application, DSP40 itself is subject to para. 11(d), such that its own criteria are deemed ‘out of date’ and have reduced weight. Again, as has been observed. The very fact that the Council still has a housing shortfall indicates that DSP40 is either framed or is being applied too strictly for it to do its job.
10. Of the five criteria, the Council acknowledges (i) and (iv) are met. The allegations in reasons (ii)-(iv) allege breaches of parts of criteria (ii), (iii) [there is no free-standing breach of (v); that allegation is a double-count]. Thus it can be seen that the ‘in principle’ RRef (i) objection is actually predicated on making good the landscape/design objection. It is actually, scheme-specific (as this is a ‘full’ application), not an in-principle objection at all.
11. In this context it is important to note that the site is proposed to be allocated for very nearly the number of units proposed by this application. The Council acknowledges the suitability of the site to accommodate ‘broadly’ ‘around 180 dwellings. It is not open, therefore, to the Council or its witnesses to object to the principle of the development of this ‘countryside’ site for significant housing numbers. The focus of the remaining reasons for refusal, therefore, are on the minutiae of the scheme proposed.
12. This will now need to be explored, but three things are worth observing now.
13. First, the policy test in DSP40 is not to cause ‘no’ harm, but to ‘minimise’ harm. In that context, the imprecations to ‘respond positively’ are predicated on their being development proposed, or else the policy would be self-defeating.
14. Secondly, it may tritely be observed that there are many ways to skin a cat. That there might be other ways of disposing of this order of housing development on the site does

not mean that these proposals are objectionable. None of the points currently being pursued by the Council could have been levelled had the scheme been in outline, rather than detailed (by being detailed, of course, the scheme brings a certainty and a speed to delivery, both of which are important in the current context). Importantly, it is *this* scheme which is being judged, not any other putative scheme invented by the Council's witness.

15. Thirdly, the evidence of the Council appears to completely overlook the fact that the appeal scheme before the Inspector was carefully designed alongside officers and specifically followed the guidance of the Council's urban design officer, Dominic Lyster, resulting in a layout endorsed by officers and recommended for approval. It has now been subject to a thorough design audit and does indeed comply with the place-making principles espoused by the Government.
16. For all of these reasons, the details of the scheme will be commended to the Inspector, (and accordingly DSP40 will be met), but the context of the absence of a housing land supply and a pressing need of affordable housing, together with the in principle acceptance of this site as suitable for development will also inform the tilted balance in para. 11(d)(ii), should it be found that there is a breach of any part of DSP40.
17. Finally, the inquiry will receive information on the New Forest recreation issue raised by NE. It is considered that this late matter has been addressed through the additional unilateral undertaking and addendum HRA, such that consultation with NE after the programmed inquiry will be able to be positive, and permission be granted accordingly.

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