

LAND EAST OF CROFTON CEMETERY AND WEST OF PEAK LANE, STUBBINGTON

CLOSING STATEMENT ON BEHALF OF
FAREHAM BOROUGH COUNCIL

1. The closing submissions on behalf of Fareham Borough Council (“the Council”) adopt the following structure:
 - I. Importance of achieving high quality design.
 - II. The Landscape context.
 - III. Inadequacies of design (including addressing reasons for refusal (iii) and (iv))
 - IV. Landscape and visual effects (including addressing reason for refusal (ii))
 - V. Development Plan and National Policy (including addressing reason for refusal (i))
 - VI. Benefits of the proposal
 - VII. Planning Balance and conclusions

I. THE IMPORTANCE OF ACHIEVING HIGH QUALITY DESIGN

2. National and local policy speaks with one voice when it comes to matters of design. High quality design is not a “nice to have”. Development which is not of a high quality fails to meet a key component of sustainable development¹. It is, in short, a prerequisite to acceptable development.
3. The NPPF tells us that the “*creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*”² Likewise policies in both the existing³ and emerging⁴ local plans require that all development proposals, buildings and spaces be of a “high quality of design”.

¹ As Mr Dillon and Ms Beuden agreed in XX. NPPF, para 126 states that “*Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.*” (emphasis added)

² NPPF, para 127

³ Fareham Borough Core Strategy, policy CS 17 (High Quality Design)

⁴ Emerging Local Plan 2037, Policy D1 (High Quality Design and Placemaking)

4. This is a demanding threshold.⁵ And intentionally so. Gone are the days in which mediocre design was to be accepted.
5. As Mr Jupp explained⁶ this is the stated policy of central government. In a Written Ministerial Statement (WMS) from earlier this year, the (then) Secretary of State accepted the conclusions of the Building Better, Building Beautiful Commission that the *“design quality of new development is too often mediocre and that systemic change would be needed to ensure design and beauty were a core part of the planning process, not an afterthought”*⁷.
6. As part of that systematic change, the July 2021 NPPF now provides that *“Development that is not well designed should be refused...”*⁸ This is a subtle, but important, alteration from previous policy⁹ which underscores that mediocre or ‘fairly good’ design is no longer to be accepted, consistent with the WMS.
7. It is against this background which the assessment of the acceptability of this detailed proposal falls to be determined.
8. The question of whether this proposal constitutes high quality design cannot, as Mr Boyle QC on behalf of the Appellants appeared to suggest, be avoided by pointing to the fact that different experts may come to different views on the matter. The decision-maker - in this case the inspector - is required to grasp the nettle and arrive at a determination of whether this proposal constitutes high quality design.
9. The Council says it does not. And for this reason alone (quite apart from the consequential unnecessary landscape and visual harm) permission should be refused, as national policy requires.

II. THE LANDSCAPE CONTEXT

10. Before turning to matters of design, it is important to properly understand the context of the appeal site and the landscape in which it sits. This is not, it is agreed, a valued

⁵ Mr Dillon and [Ms Bueden] agreed that the threshold was a high one.

⁶ XIC (Jupp) Day 4

⁷ <https://questions-statements.parliament.uk/written-statements/detail/2021-02-01/hlws746>

⁸ NPPF, para 134

⁹ The equivalent paragraph in earlier versions of the NPPF provided that *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents”* See NPPF 2019, para 130

landscape within the meaning of the NPPF. But at a local level it is a landscape of some value and sensitivity.

11. The Fareham Landscape Character Assessment (FLCA)¹⁰ (and in particular Part 2 of the FLCA, the Sensitivity Assessment) concludes that the landscape character area in which the site is located (LCA7.1a) is of a moderate to high value, explaining that the area *“retain[s] a predominantly rural, agricultural character and a strong sense of place...”*¹¹ and, even taking account of the Stubbington bypass, the sensitivity is judged to be high, *“with very limited capacity to accommodate development without a significant impact on the integrity of the area’s rural, agricultural character.”*¹²
12. The FLCA acknowledges that there may be ‘limited scope’ for development in certain locations within the character area, including on enclosed land on the northern edge of Stubbington, however - and importantly in the context of this appeal - it explains that *“any such development would need very sensitive siting, design and mitigation to avoid piecemeal attrition of the area’s overall rural character.”*¹³
13. Having had regard to the conclusions of the FLCA Mr Russell-Vick concludes that the sensitivity of the landscaping units which he has examined¹⁴, including the site and its immediate surroundings, is of slightly less sensitivity than that identified in the FLCA for LCA 7.1a- being of ‘moderate’ sensitivity on his five-point scale¹⁵.
14. In both his written and oral evidence Mr Russell-Vick explained why - consistent with the guidance in the LCA cited - the sensitivities of the appeal site and its surroundings mean that achieving a high quality of design is of particular importance in this case. These sensitivities include: that the site has a comparatively rural, countryside character, with a sense of separation from the adjoining settlement¹⁶; that it has a rural edge with relatively open and attractive landscape beyond, in particular to the north

¹⁰ CD7.10

¹¹ CD7.10, Part 2, p137

¹² CD7.10, Part 2, p138

¹³ CD7.10, Part 2, p138

¹⁴ See ID 7

¹⁵ PRV, 5.13. See Appendices G for the Sensitivity Criteria. And ID7 for a plan identifying the three landscape units PRV has assessed. As PRV explained (XIC Day 1), the sensitivity of unit of unit 1/2 is less than the wider LCA 7 due to the greater proportion of enclosed landscapes at the settlement edge versus the open landscape in that unit relative to the wider LCA 7.

¹⁶ PRV, para 4.5(2)

and north-west¹⁷; the presence of Crofton Cemetery immediately to the west¹⁸, agreed to be well-used area for contemplation and quiet recreation¹⁹; and important open space, including the public right of way within the south.²⁰

15. Regrettably, in contrast to Mr Russell-Vick's careful, measured assessment of the landscape sensitivities of the area, Mr Seymour's evidence on this issue was wholly unconvincing. His assessment is that the overall sensitivity of the "site and surrounding landscape" was "low"²¹. However, as became increasingly clear in cross-examination this assessment is deeply flawed, for the following reasons:

- (1) First, in arriving at this assessment the LVIA²² paid no regard whatsoever to the assessment of value, susceptibility or sensitivity of LCA 7.1a as recorded within the FLCA. Mr Seymour accepted²³ that the failure to grapple with the conclusions of the FLCA, let alone justify a departure from them, was contrary to the guidance set out in GLVIA v.3²⁴: guidance published by the Landscape Institute which is intended to ensure the rigour and transparency of such assessments. Indeed, it can be fairly inferred that the assessment of sensitivity arrived at in the LVIA – which Mr Seymour agreed²⁵ was significantly at odds with that in the FLCA – was made in ignorance of the conclusions of the FLCA.
- (2) Second, as is apparent from the LVIA itself, and as Mr Seymour ultimately came to accept²⁶, the "study area" assessed within the LVIA is an extremely large area, with a radius of approximately 2.5km (from the site) and which incorporates all of Stubbington, large parts of the urban area of Fareham, the Sewage works at Peel Common (within LCA7b) and Solent airport.²⁷ It is, perhaps, understandable given the significant amount of urban areas and other large industrial features within this area, that the sensitivity of this study area was considered to be "low".

¹⁷ XIC PRV (Day 1). Mr Dillon agreed in XX (Day 3) that the north and north-western edges could be considered "rural, facing towards the open countryside".

¹⁸ XIC PRV (Day 1) and PRV, para 4.5(5)

¹⁹ Dillon XX (Day 3)

²⁰ PRV (Day 1)

²¹ JS, p35, Table 1. LSoCG, Table 1

²² CD1.19. The LVIA had been checked by JS, as he confirmed in XX (Day 2). See

²³ Seymour XX (Day 3)

²⁴ CD7.7, p77-78

²⁵ Seymour XX (Day 3)

²⁶ Seymour XX (Day 3)

²⁷ LVIA CD7.7, p8 and Figure 5

But this tells us very little, if anything, about the sensitivity of the local landscape with which we are concerned.

- (3) Third, this misconceived approach was followed through into his proof of evidence (which purports to update the LVIA²⁸) which uses the same study area as the LVIA, and which simply adopts its conclusions on value and sensitivity.²⁹
- (4) Fourth, this misconceived approach was then further compounded by the fact that Mr Seymour directly attributed the conclusions of the LVIA not only to the 'site and the surrounding landscape'³⁰, but also to the appeal site itself³¹ – to ascribing a 'low' sensitivity to both. This was not due to any further analysis in his proof, but simply by reading across the conclusions from the LVIA. It is clear, therefore, whether intentionally or not, Mr Seymour elided the conclusions in the LVIA which concerned the landscape sensitivity of a very large study area – and one which included many urban elements - with the landscape sensitivity of much smaller areas: the site itself, and its immediate surroundings. And in doing he had failed to take account of published landscape character assessment which indicated that the appeal site (and its immediate surroundings) fell within an area of high sensitivity.
- (5) Fifth, when faced with this series of missteps – and faced with the perverse situation that *on his own analysis* the landscape harm from the proposal is greater over LCA area 7.1a than for the site itself³² - rather than accepting the errors for what they were, Mr Seymour sought to 'double-down', seeking to defend his conclusions in the landscape SoCG. But in doing so, his responses became even more incredible: for instance, as the insightful questioning from the inspector exposed³³, his claim that the sensitivity of the landscape character of the site had been reduced to "low" because of the emerging allocation (which finds no basis in the LVIA or his proof) does not hold true because (a) the site wasn't an

²⁸ Seymour Proof, para 5.6

²⁹ As Mr Seymour accepted XX(Day 2). See in particular para 6.22 which not only refers to the "study area" but also references features – such as the Solent Enterprise Zone at HMS Daedalus – which fall well outside of LCA 7, but within the study area with a 2.5km radius

³⁰ Seymour, p35, Table 1

³¹ LSCOG, Table 1

³² See LSCOG, Table 1. Mr Seymour concludes that there would be negligible overall landscape effects to the site itself, but moderate/minor landscape effects to the entirety of LCA7.1a

³³ Seymour, INS Q (Day 3)

emerging allocation at the time the LVIA was undertaken and (b) it is entirely unclear why an emerging allocation in a policy document should affect the assessment of landscape sensitivity.³⁴

16. Mr Boyle QC will no doubt say that this is nothing to the point. The Council accept that, in principle, the appeal site is suitable for a sizeable amount of residential development on the appeal site, and therefore, whatever the correct assessment of sensitivity of the local landscape, the same effects will occur in any event.
17. The inspector should not be seduced by such a submission, however attractively it is made. The assessment of the sensitivity of the landscape, and the Appellant's flawed approach to it, are of real significance for a number of reasons:
 - (1) First, as Mr Russell-Vick explained, it is necessary to properly understand the sensitivities of the appeal site and the immediate surroundings in order to formulate an appropriate design response to them. Where an LVIA has not properly captured the sensitivity of the appeal site and its surroundings, it is perhaps not surprising that the design response is inadequate.
 - (2) Secondly, the greater the value and sensitivity of the area, and ultimately the greater the landscape (and visual effects) which may occur, the more important it is to minimise those impacts. Thus, a failure to minimise landscape (and visual) impacts in an area of low value and sensitivity is less harmful than a failure to minimise landscape (and visual) impacts in an area of higher value and sensitivity. In short, higher quality landscapes required higher quality of design.
 - (3) Thirdly, with respect to Mr Seymour, the systematic flaws in his assessment undermine the credibility of his evidence. This is of relevance to the inspector's determination. Significantly greater weight should be given to Mr Russell-Vick's evidence on landscape and visual matters than that of Mr Seymour. In particular, his conclusion that the landscape and visual impacts have not been minimised³⁵ should be preferred to Mr Seymour's evidence to the contrary.³⁶

³⁴ It would give rise to sites "pulling themselves up by their bootstraps" – i.e. it being argued that a site was suitable for development and should be allocated, because the landscape sensitivity of the site/surrounding area is low due, in part, to their emerging allocation!

³⁵ PRV, para 5.41 6.9, 6.13 and XIC (Day 1)

³⁶ Riven in re-examination (Day 3)

III. INADEQUACIES OF THE DESIGN

18. The proposal does not meet the high threshold of “high quality” design, and that the development is not “well-designed”. This is the outcome of an accumulation of elements of the proposal where the design response is inadequate, often failing to achieve the objectives the DAS set itself.
19. These issues are matters of detail. This is necessarily so: because the quality of design turns on matters of detail. Thus it is no answer to suggest, as Mr Boyle QC might, that because the issues could be described as “narrow” or because they relate to specific aspects of the design proposal (e.g. the number and disposition of houses in the north-west corner), that the Council’s concerns are unfounded.
20. As was set out in Opening, the key issues in respect of the inadequate design response can be divided into three categories. These were fully set out in the Mr Russell-Vick’s proof, and this closing is not intended to be a substitute for the detailed evidence given by him in the proof and in evidence in chief on these matters.

(1) Inappropriate design response at the boundaries of the Appeal Site

Northern and North-western boundaries

21. Mr Dillon agreed that, when deciding whether the proposal achieves a high quality of design, it would be appropriate for the inspector to ask “*whether the proposals for the north and northwest of the site provide an appropriate response to the rural edges and open countryside*”³⁷. And he also agreed that, in doing so, the inspector should consider – amongst other matters – three issues: (i) whether a “substantial landscape buffer”³⁸ has been provided; (ii) whether the landscape buffer would be effective to “minimise the impact of the built form”³⁹; and (iii) whether the built form in this location is appropriate to the edge of countryside location
22. It is the Council’s case that the proposal as designed provides an inappropriate response to the rural edges and open countryside on the north, and north-western edges of the site.

³⁷ Dillon (XX) Day 3

³⁸ One of the objectives identified in the DAS, p15

³⁹ One of the functions of the buffer

23. I start with the **north-eastern corner**. The existing view can be seen in viewpoint 5 of the LVIA⁴⁰. It offers views across the appeal site from Oakcroft Lane. Because of the break in the poplars at this point, where the double gate is located, clear views are currently obtainable across the appeal site.
24. As the LVIA accepts the “development would result in a prominent change in the existing view”⁴¹. Mr Seymour accepted that the change would be an adverse one.⁴²
25. It is beyond argument that the landscape buffer provided in this location would not be substantial. To the contrary, there would be limited, if any, buffer provided. The gap in the poplars where the existing gate is located would remain (contrary to the schematic plan in the DAS⁴³); the area of the landscape buffer would be very minimal⁴⁴; and it would only consist of grassland area, with the addition of two new trees⁴⁵. As Mr Dillon accepted there would be clear and largely uninterrupted views of the Appeal Site⁴⁶.
26. The new houses would be very prominent in these views, with the built form only being set back from Oakcroft Lane by around 22m, and one of the buildings (plots 2 and 3) being of 2.5 storeys in height. There would frontage car parking in this location, with the external ring-road (to which we will return) being located in front of the houses. The landscape buffer – such that it is – would do little if anything to minimise the impact of built form, which would dominate the view.
27. In terms of the appropriateness of the built-form itself, it is not, as Mr Dillon accepted⁴⁷, a location of “lower density” within the Appeal Site⁴⁸ such that the so-called “feather the edge” approach applies here. Nor does he claim, in contrast to the built form in the north-west corner, that built form proposed in the north-eastern has been specifically designed to respond to the rural edge.⁴⁹

⁴⁰ CD1.19, p70

⁴¹ *Ibid.*

⁴² XX Dillon (Day 2)

⁴³ DAS, p15. See also the Lyster Plan at Appendix 6 of JS

⁴⁴ See ID11

⁴⁵ See CD1.22 Sheet 2

⁴⁶ In particular plots 1- 5

⁴⁷ XX Dillon (Day 3)

⁴⁸ Dillon, Appendix A, density plans

⁴⁹ Cf. his case in relation to the built form on the NW corner at Dillon, para 7.06

28. It is clear therefore that, having regard then to the three issues which Mr Dillon considered to be of relevance to the acceptability of design on this edge, the proposed design is an inappropriate response to this rural edge.
29. As Mr Russell-Vick explains *“Screen planting at this location, setting back the development further into the site with planting outside of the canopy spread of the poplars, and by limiting the storey heights to two, would all contribute to an important reduction in the visual effect, particularly in the mid to long term as the landscaping matured.”*⁵⁰ His concept plan illustrates one way in which the north-eastern corner could be sensitively designed, appropriate to the rural edge, with an ‘entrance’ open space providing an immediate attractive frontage and creating a strong sense of place, and the built form being set back significantly.⁵¹
30. The importance of achieving an appropriate design for this corner of the site is heightened by the impact that the proposed access would have on the character of Oakcroft Lane. The DAS recognises⁵² that the proposed access arrangements will have the effect of urbanising Oakcroft Lane, but have been justified on highways grounds, rather than being a landscape-led approach. As Mr Dillon accepted⁵³, this makes it all the more important to ensure that elsewhere on the boundary to Oakcroft lane the design does everything it can to retain the existing rural character of the lane.
31. Turning to the **north-west corner**. The existing view can be seen in viewpoint 1 of the LVIA⁵⁴. This viewpoint illustrates why Mr Seymour accepts that the line of poplars *“doesn’t provide a strong visual barrier to the site”*⁵⁵. Here, as elsewhere on this boundary, the proposal is to reduce the number of poplars *“by removing weak or leaning trees, along with those which show that signs of stems decay”*⁵⁶, such that the visual filtering that they would provide would be reduced in any event.
32. All experts agreed that, even if the proposed native shrub planting is successful, that the built form will still be seen from Oakcroft Lane from this location through (and above) the vegetation. Mr Russell-Vick raises concerns that the landscape buffer is insufficient to

⁵⁰ PRV, para 5.19

⁵¹ PRV, para 5.38 and PRV11

⁵² CD1.5, p16

⁵³ XX Dillon (Day 3)

⁵⁴ CD1.19, p70

⁵⁵ Seymour, para 7.9

⁵⁶ AIA, CD1.10, para 3.7. This applies to the trees in G13 – the poplars on the north and north-western boundary of the site

allow for the native shrub planting to be fully effective, due to shading from the canopy but, more significantly, the lack of the availability of moisture as a result of the poplars.⁵⁷ No direct evidence was led to gainsay this opinion, either by Mr Seymour or Mr Dillon – the height of the Appellant’s case being that there is an existing row of poplars in the vicinity with a hedge underneath. We would, therefore, invite the inspector to accept the concerns raised by Mr Russell-Vick in this regard and take them into account when considering whether would be effective to “minimise the impact of the built form”.

33. Even if the native planting was fully effective, as Mr Russell-Vick explained, the proposed buffer would not amount to the “substantial landscape” buffer required.⁵⁸ This is particularly so given the proximity of the built form to this edge and, importantly, the nature of that built form.

34. The built form in this location “presents an almost entirely solid built elevation of houses and garages”⁵⁹. This can be seen both from the revised elevations that have been provided⁶⁰ and the CGI produced by Mr Dillon⁶¹ (it being noted that Mr Dillon agreed that these were impressionistic rather than entirely accurate). Mr Boyle QC’s suggestion in cross-examination that a user of Oakcroft Lane would experience a “concertina effect”, with views through the built form “opening and closing” should be rejected. His witness, Mr Dillon, was more realistic in his assessment when he explained that there would only ever be “glimpsed views through” the built development.⁶² As Mr Russell-Vick explained those gaps would be very small.⁶³ The reality is that someone walking, riding or driving along Oaskcroft Lane would perceive the houses and garages as solid built elevation to the north-western corner.

35. Mr Dillon agreed that, if the Inspector concludes that the perception would be of continuous built form, without an appreciable gaps – as we say will be the case – then

⁵⁷ PRV, para 5.18 and PRX XIC (Day 1)

⁵⁸ PRV, para 5.18, PRV XIC (Day 1), PRV Roundtable on conditions (Day 5)

⁵⁹ PRV, para 5.19

⁶⁰ PRV. Figure 12

⁶¹ Dillon, p26

⁶² Dillon XIC and XX (Day 3)

⁶³ PRV XX (Day 2)

this would not present a ‘softer edge to development’, and would not constitute an “appropriate response to the rural edge”⁶⁴

Western Edge with the Cemetery

36. The Cemetery is a sensitive feature located immediately adjacent to the Appeal Site. It is common ground that its users are of a high sensitivity.⁶⁵ Having had regard to the design objectives set out in the DAS⁶⁶, and the stated requirements on the Lyster plan⁶⁷, Mr Dillon agreed that when deciding whether the proposal is well designed it would be appropriate for the inspector to ask, “*will the design proposed maintain a sense of place and tranquillity for users of the cemetery*”⁶⁸?
37. It will not.
38. In terms of the visual impacts, the LVIA is right to record – as Mr Dillon accepted⁶⁹ – that the “*view would alter from rural in feel to a suburban form*”⁷⁰. In existing views east from the cemetery across the appeal site (e.g VW2 of the LVIA) the edge of Stubbington is not readily apparent due in part to the distance and in part to the TPO trees which line the eastern edge of the appeal site. The proposal would bring housing – and therefore the new suburban edge of Stubbington- to within 25m of the boundary of the cemetery. The majority of the housing on this western edge is 2.5 storey and it would, Mr Seymour confirmed, break the existing skyline currently provided by the TPO trees in the background.⁷¹
39. In addition to the visual impacts, the introduction of a roadway on the eastern boundary (as part of the ring-road around the site), together with the significant amount of frontage parking proposed in this location, would bring with it the disturbance that comes with moving and parking vehicles.⁷² Mr Dillon agreed that users of the cemetery would be

⁶⁴ Dillon XX (Day 3)

⁶⁵ LSOCG, Table 2

⁶⁶ CD1.5 DAS, p15 “*ensure the setting of Crofton Cemetery and...maintain the sense of place and tranquility for users*”

⁶⁷ JS Appendix 6 “*Create a future wooded edge to maintain tranquility of cemetery*”

⁶⁸ XX Dillon (Day 3)

⁶⁹ XX Dillon (Day 3)

⁷⁰ LVIA, CD1.19, p67, VW2

⁷¹ Seymour XX (Day 3)

⁷² PRV, para 5.20.

aware of the noise and movement of the cars, as well as people parking and getting into and out of cars on the Appeal Site.⁷³

40. Thus, the proposal would fail to maintain the tranquillity and sense of place currently afforded by the cemetery. Indeed, it would actively harm both qualities.

41. As Mr Russell-Vick explained⁷⁴, and as his concept plan shows, a design response which provided for a significantly larger green buffer and set back of development on this edge; which maintained building heights at 2 storeys; and which avoided a roadway adjacent to the boundary would reduce the effects on the cemetery and its sensitive users. This would be a far more appropriate response to the western edge of the site.

Southern boundary and views from the south

42. Although the set back-distance and buffer are considered to be more reasonable in this location, the existence of external roads, hard drives and run of four blocks – nine properties in all – at 2.5 storeys high would increase visual impacts on users of the public footpath to the south and open space adjacent to Marks Tey Road. These impacts are unnecessary. As Mr Russell-Vick explained⁷⁵, and as his concept plan shows, locating an open space in the south-western corner, removing the circular ring-road, and limiting the heights of buildings to 2 storeys would all minimise the impacts of the proposal.

(2) Scheme design of Green Infrastructure and interconnectivity

Green Corridor

43. It is common ground between the parties that a key design objective for this site is to achieve a “green corridor” through the heart of the site.⁷⁶ However, the parties fundamentally disagree as to whether the current design achieves this objective.

⁷³ XX Dillon (Day 3). This disturbance cannot, sensibly, be overcome by the addition of a “few bollards” as Mr Boyle QC half-heartedly suggested. There is no indication that such a suggestion has been canvassed with the Highways Authority. And in any event, given the frontage parking, it necessarily wouldn’t prevent occupiers of dwellings on the western edge of the appeal site from accessing their dwellings.

⁷⁴ PRV, para 5.21 and PRV XIC (Day 1)

⁷⁵ PRV XIC (Day 1)

⁷⁶ See CD1.15 DAs, p15 “A green corridor should be implemented, connecting through the development from north to south with the provision of central areas of POS.”

44. The function of the green corridor is both to “link the wider countryside with the heart of the development” and to ensure that the focus is on achieving a “pedestrian walkable development”⁷⁷.
45. In light of this it would be appropriate for the inspector to ask “*is the dominant characteristic of the corridor running through the heart of the site one of green infrastructure and pedestrian routes, or is it of built form, roads and vehicles*”? Mr Dillon agreed that if the inspector came to the conclusion that it was the built form, roads and vehicles which were dominant, then the design objective of achieving a green corridor would not have been achieved.⁷⁸
46. It is the Council’s case that the scattered tree planting, the 3m grass verge (interrupted by access for frontage parking) and the narrow strips of shrub planting in front of the built form, would not provide the sense of a green corridor.⁷⁹ Moreover, as is well-illustrated by the CGI provided in Mr Dillon’s proof⁸⁰, the two areas of open space within the developed area of the appeal site are relatively small and significantly compromised by the roads, laybys and frontage parking which surround them.
47. The central corridor and internal public opens spaces would, as Mr Russell-Vick explains, “*be dominated not by landscape, but by the roads, parking drives and housing*” and for that reason would “*not be perceived as a green corridor*”⁸¹
48. Mr Russell-Vick’s concept plan illustrates how the reduction of housing by 26 units, together with an appropriate balance between parking courts and frontage parking, would enable both a larger, more impactful open space within the developable area, together with a wider central green corridor, and largely separate pedestrian route. Providing a true green corridor.

Pedestrian walkway in green infrastructure buffers

49. Even taking account of the newly proposed condition concerning the surface treatment of the internal walkway, the proposed design is limited and compromised. It does not

⁷⁷ JS Appendix 6, Lyster Sketch see notations. “Sketch is just to show importance of linked corridors and POS focusing on pedestrian walkable development” and “Connected Green spaces and linking wider countryside with heart of development

⁷⁸ XX Dillon (Day 3)

⁷⁹ PRV, para 5.28

⁸⁰ Dillon, para 7.28 “*Example of one of the green spaces*”. It appears to be the northern green space

⁸¹ PRV, para 5.28

provide a continuous walkway in the landscape buffer, off carriage paths and footpaths.⁸² Instead, it would require users at various points around the route to use footpaths, and/or shared surface drives. This is the result of the design choice to include a vehicular ring-road around the developable area.

50. In the grand scheme of things this may be considered to be a small point, but it is illustrative of a design approach which has not been clearly thought through or landscape-led.

(3) Scheme Layout

51. Similarly, the layout of the scheme does not achieve the requisite high-quality of design. Mr Russell-Vick points to three examples of this:

- (1) First, the grid-like, rectilinear design of the housing blocks – which Mr Dillon accepts is a fair characterisation of the design, save for the northern corner⁸³ – has an urban grain and character, which is not particularly well-suited to housing at the countryside edge.⁸⁴ As Mr Russell-Vick accepts that it would not have been appropriate to mimic the surroundings in this instance. However, he explained that there is opportunity to provide a more informal, irregular built arrangement – as opposed to the regular sized, rectangular blocks – which would be an appropriate design response and would integrate more successfully with the surroundings.⁸⁵
- (2) Second, save for the curvilinear design of the built form in the north-western corner (considered above), there is no distinction in design between the identified “rural edge” of the north and west, and the edge which abuts Stubbington to the east. It is no different in its makeup of roads, shared drives or parking.⁸⁶
- (3) Thirdly, the inclusion of 2.5 storey buildings not only increases the visual impact from certain locations (discussed above), but is scattered, without a clear rationale

⁸² As UDC Urban design officer had indicated was necessary. Lyster Plan, JS Appendix 6

⁸³ XX Dillon (Day 3). See Proof, para 7.06 ““Curved edges to the northern blocks ensure a grid like layout does not dominate.” From which it is implicit that, save for the “cured edges” the remainder of the site has a grid-like layout – which plainly it does.

⁸⁴ PRV, para 5.34 and PRV XIC (Day 1)

⁸⁵ PRV, paras 5.34, 5.38 (bullet 8) and PRV XIC (Day 1)

⁸⁶ PRV, para 5.34 and PRV XIC (Day 1)

and without grasping the opportunity it may have provided to establish focal points within the scheme.⁸⁷

Conclusions on matters of design

52. As Mr Russell-Vick explains in his proof of evidence, and as he expanded in his oral evidence⁸⁸, the accumulation of the factors set out above is such that the proposal fails to meet the requirements of NPPF, para 130. In particular, he explained that it would not: (i) be “visually attractive as result of good...layout and appropriate and effective landscaping” (criterion a)); (ii) be “sympathetic to local character, including the surrounding built environment and landscape setting” (criterion b)); or (iii) “establish...a strong sense of place” (criterion c). For similar reasons he also concluded that the proposal would fail to reflect the guidance in the National Design Guide.⁸⁹

53. It is these multiple inadequacies in design which support reasons for refusal (iii) and (iv).⁹⁰

54. It follows that the proposal is not “well-designed” (NPPF, para 134), and does not meet the threshold of achieving “high quality design” (NPPF, para 126). As government policy stipulates this, itself, is sufficient to warrant a refusal of permission. Moreover, as Ms Beuden fairly accepted, it is no part of the Appellant’s case that, if the inspector were to agree with the conclusions of the Council concerning the quality (or otherwise) of the proposed design, that permission should nonetheless be granted.⁹¹

⁸⁷ PRV, para 5.35 and PRV XIC (Day 1)

⁸⁸ PRV XIC (Day 1)

⁸⁹ Specifically, Mr Russell-Vick explained in XIC that the proposal: (a) fails to respond appropriately to the landscape character of its surroundings, contrary to the context characteristic; (b) does not create a positive and coherent sense of place, contrary to the identity characteristic; (c) its access/movement corridors are not well integrated, contrary to the movement characteristic and (d) its green infrastructure and public spaces are inadequate, contrary to the public spaces characteristic

⁹⁰ The proposal does “fail to respond positively to and be respectful of the key characteristic in this countryside location”; it does provide “limited green infrastructure” and inadequate “interconnected green/public spaces” (rfr (iii)). And it would not “deliver a housing scheme of high quality which respect and responds to the key characteristics of the area” (rfr (iv)). In terms of the issue of cramped layout, Mr Russell-Vick explained that whilst there is no objection to the density of the proposal per se, the proposal be perceived as being cramped due to the dominant characteristic being of built form, roads and parking, rather than of green infrastructure or its countryside setting.

⁹¹ Beuden XX(Day 5)

IV. LANDSCAPE AND VISUAL EFFECTS

55. The proposal would have significant – and significantly adverse – effects on the landscape character and, in particular, the visual amenity of the local area.
56. For the reasons outlined above, Mr Russell-Vick’s evidence on these issues is plainly to be preferred to that of Mr Seymour.
57. He concludes that the effects on the landscape character of the site and its immediate surroundings to be **major-moderate adverse; moderate** for that part of LCA7 between Fareham and Stubbington; and **moderate-minor** for the LCA7 area as a whole.⁹²
58. In terms of visual effects, Mr Russell-Vick concluded that there would be either **major+, or major adverse** effects for walkers/cyclists on Oakcroft lane, users of Crofton Cemetery and those using PROW 509, and **Major-moderate adverse** effects for occupants of Marks Tey Road and users of PROW 67.
59. He accepted that, given the broad categories of LVIA assessment, any significant residential development of the Appeal Site would likely fall into the same categories.⁹³ However, he also explained that there were gradations of effect even within the same category. Mr Seymour concurred with this analysis, agreeing that a proposal could give rise to materially difference landscape and visual effects even if those effects ultimately fell within the same LVIA category.⁹⁴ Indeed, Mr Seymour’s assessment of the 206 and 261 unit schemes illustrated as much: he concluded that the landscape and visual effects of the two schemes would be identical in LVIA terms, notwithstanding that it was his case that the 206 unit scheme was materially less harmful in landscape and visual terms.⁹⁵
60. As Mr Russell-Vick explained in both his written and oral evidence, as a result of the inadequate design of the proposal the landscape and, in particular, visual effects have not been minimised. It follows that the proposal would cause a level of harm to the character and appearance of the area which is not the necessary or inevitable consequence of residential development of the appeal site.

⁹² PRV, para 5.14 and PRV XIC (Day 1)

⁹³ PRV XX (Day 2)

⁹⁴ Seymour XX (Day 3)

⁹⁵ Seymour XX (Day 3)

61. It is the unnecessary harm to the character and appearance of the area which underscores reasons for refusal (ii).

V. DEVELOPMENT PLAN AND NATIONAL POLICY

Development Plan

62. It is common ground that the proposal, being a residential development in the countryside of significant scale, is in conflict with policies **CS14** of the Local Plan Part 1: Core Strategy (LPP1), and **DSP6** of the Local Plan Part 2: Development Sites and Policies (LPP2). It is also common ground that, due to the housing land supply situation, these policies can be given limited weight.

63. Turning then to Policy **DSP40** of LLP, as a result of its inadequate design and failure to minimise adverse impacts on the countryside, the proposal is in conflict with DSP40(ii)⁹⁶ and (iii)⁹⁷. As a consequence, the environmental impacts are unacceptable, contrary to DSP40(v).

64. DSP40 is a contingency policy which provides a plan-led approach to meeting any shortfall in the five-year supply position. Ms Beuden accepted that this approach was consistent with national policy. She also accepted that criteria (ii) and (iii) were consistent with national policy. This was in line with the conclusions of the inspector in the Newgate Lane (North) decision⁹⁸.

65. Ms Beuden's attempt - not foreshadowed in her proof - to reduce the weight to DSP40 simply because there is a lack of a five year supply and therefore DSP40 (as one of the most important policies) is 'deemed' to be out of date must be rejected. As was pointed out in cross-examination, on this logic, DSP40 - which only comes into play when there is a lack of a five year supply - could never be given full weight.

66. In the Newgate Lane (North) decision the inspector slightly reduced the weight to be given to DSP40 as a result of the persistency of the shortfall. But even then DSP40 was

⁹⁶ Having regard to the supporting text at 5.166 and the Newgate Lane (East) decision [CD6.6, para 26] it is clear that criterion (ii) can be considered from a landscape and visual, as well as physical/spatial perspective, For the reasons outlined above, the proposal would not be well-related to existing urban settlement boundaries, or well-integrated with the settlement.

⁹⁷ For the reasons given above the proposal would not "limit.. any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.": Newgate Lane (North) decision [CD6.3, para 21]

⁹⁸ CD6.3, paras 108-110

given considerable weight (and there in circumstances where the housing land supply situation was significantly worse than it is agreed to be now⁹⁹). Considerable weight is therefore the very least weight which should be given to DSP40 in the context of this appeal. Again, breach of this policy is significant.

67. It is the breach of policies DSP6, DSP14, and DSP40 which underscore reason for refusal (i).

68. In addition and importantly, the proposal would not be of “a high quality of design” nor create a “quality place”, such that **Policy CS17** of LPP1 is breached. Consistent with the decision in Newgate Lane (East)¹⁰⁰ the policy should be given full weight. It is, as Ms Beuden accepted, entirely consistent with national policy. The suggestion that it should be given any less than full weight (again not advanced in Ms Beuden’s proof¹⁰¹) because of the lack of a five year housing land supply and/or the fact the contingency element of DSP40 was engaged (both of which were true in the Newgate Lane (East) decision) should be rejected. Policy CS17 is concerned with the quality of design. It is not a policy for, or which restricts, the supply of housing. There is no reason why the requirement for high quality design should be watered down in circumstances where there is a lack of five year supply. Indeed, to do so would be contrary to the clear intentions of government policy.

69. It follows that the breach of this policy must be give substantial weight.

70. For the reasons set out by Mr Jupp¹⁰², the proposal is also in conflict with policies D1 and HA54 of the emerging Local Plan 2037, albeit as he accepted due to the relatively early stage of production these policies can only be given limited weight.

71. It follows that the proposal conflicts with the development plan as a whole. There is, therefore, a statutory presumption against the grant of permission.¹⁰³

⁹⁹ See CD6.3, paras 87-91. In the 5yr HLS SoCG, the housing land supply is agreed to be between 3.17 (the Appellant’s lowest figure) and 3.57 (the Council’s figure): see paras 4.1+4.2

¹⁰⁰ CD6.6, para 46

¹⁰¹ Beuden, para 3.14 – cited the relevant passages of the Newgate Lane (East) decision and did not demur

¹⁰² Jupp XIC (Day 4)

¹⁰³ Established by s.70(2) TCPA 1990, and s.38(6) PCPA 2004; see *Gladman Developments v SSHLG* [2021] EWCA Civ 104 [CD6.8, at para 67]

National Policy

72. While the proposal finds support from some policies in the NPPF with which it would be consistent – chief amongst them, the objective of significantly boosting the supply of housing¹⁰⁴ - it would be contrary to important policies within the framework.
73. As explained above, national policy dictates that development which is “not well designed should be refused”: **NPPF, para 134**. It is one of only seven occasions in the NPPF in which government policy prescribes that permission should be refused. This means the requirement for high quality design is put in the same category as avoiding major development in National Parks and AONBs; preventing significant harm to biodiversity; and ensuring there is no loss of irreplaceable habitats. It is that important.
74. As Ms Beuden accepted, a failure to achieve a high-quality design is a factor which must be given significant weight in the balancing exercise, including when applying the tilted balance (to which we will return below).¹⁰⁵
75. In addition, a proposal which causes unnecessary adverse impacts necessarily fails to “recognise...the intrinsic character and beauty if the countryside” contrary to **NPPF, para 174(b)**. This further weighs against the proposal.

VI. BENEFITS OF THE PROPOSAL

76. It is true, of course, that the proposal would bring with it tangible benefits, most significantly the provision of market and affordable housing in an area which does not currently have a 5-year supply, and has a need for further affordable housing. It would also deliver significant biodiversity net gain. These are material considerations which weigh in favour of the development. As a totality, Mr Jupp, fairly, gives these benefits substantial weight.¹⁰⁶
77. However, it is highly relevant in this context, that the Council accepts that the site is in principle suitable for housing¹⁰⁷; that the site is allocated in the emerging plan (Policy HA54, with an indicative yield of 180); and that there is an extant outline

¹⁰⁴ NPPF, para 60

¹⁰⁵ Beuden XX (Day 5)

¹⁰⁶ Jupp Proof, para 10.19

¹⁰⁷ Main SoCG, para 5.1

application for the residential development of the site for 180 dwellings before the Council.

78. This means that virtually all the benefits of this scheme are capable of being provided – and provided in the not-too-distant future¹⁰⁸ – but by a proposal which is well designed; which does properly reflect and respond to its sensitive edge of settlement location; and which minimises adverse impacts.

VII. PLANNING BALANCE AND CONCLUSIONS

79. At the end of Ms Beuden’s cross-examination it emerged that there was a degree of consensus between the parties. Ms Beuden agreed that it was no part of the Appellant’s case that were the inspector to conclude that the proposal does not constitute high quality design – such that it is in breach of Policy CS17 and the national policy prescription that permission should be refused is engaged – permission should nonetheless be granted.¹⁰⁹

80. The Council agrees.

81. It contends that the proposal plainly does not meet the threshold of achieving high quality design. Indeed, it falls well short of this requirement. And that reason alone is sufficient to significantly and demonstrably outweigh the benefits.

82. The position is even more stark when one factors in the failure to minimise the harm to the landscape character and visual amenity of the area; the multiple breaches of development plan policy¹¹⁰; and the fact that the vast majority of the benefits could be achieved by a proposal which is well designed, and which minimises adverse impacts.

83. It follows that the presumption in favour of sustainable development in NPPF, para 11 is not engaged and that material considerations do not outweigh the breach of the development plan.

¹⁰⁸ The proposal for the 180 unit scheme contends that it complies with Policy DSP40(iv) – that it can be demonstrated that the proposal is deliverable in the short term .See Planning Statement.

¹⁰⁹ Beuden XX (Day 5)

¹¹⁰ It is settled law that, in applying the titled balance test, account can be taken of development plan policies and compliance or otherwise with them: *Gladman Developments v SSHLG* [2021] EWCA Civ 104 [CD6.8], paras 42-61

84. Accordingly, the Council invites the Inspector, applying section 38(6) Planning and Compulsory Purchase Act 2004, to refuse planning permission and dismiss the appeal. Doing so would require the Appellant to return to the drawing board, and to produce an alternative design for the residential development of this site which meets the important objectives of national and local policy.

ROBERT WILLIAMS

Cornerstone Barristers

28th October 2021