IN THE MATTER OF

THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF

LAND EAST OF CROFTON CEMETERY,

STUBBINGTON, FAREHAM.

CLOSING SUBMISSIONS
ON BEHALF OF
THE APPELLANTS

---

1. These Closing 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 The site lies outside but immediately adjacent to the out-of-date settlement boundary of Stubbington, a sustainable settlement for additional housing growth, and in a sustainable location for access to services and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 through the planning Statement of Common Ground[1] that the site is suitable for housing development of broadly that order. The appeal scheme is only 26 dwellings more than the proposed allocation.

[1] Planning SoCG at para. 5.1

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[2]. 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 six able to be overcome by s.106/conditions). Of the four operative reasons, the last part of RRef (iv) (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. Accordingly, at the start of the inquiry, the Inspector identified three main issues:

   (1) The effect of the proposals on the landscape character and appearance of the area;
   (2) Whether the proposal would harm the spatial character of the area by developing in land designated as 'countryside'; and
   (3) Whether the proposal would deliver an acceptable residential environment for future occupiers.

8. Before turning to those, however, it is helpful to set out the now agreed approach to decision-taking, in the context of s.38(6) of the P&CPA 2004, the development plan and national policy.

[2] From the Council – see Jupp xx CBQC, Day 4

The correct approach to decision-taking:

9. The correct approach to decision-taking is agreed in this case between the parties. It has recently been rehearsed in front of and adopted by two inspectors in appeals in Fareham (Newgate Lane N/S[3] and Newgate Lane E[4]) as follows:

10. The starting point is s.38(6) and the presumption in favour of the development plan, subject to material considerations. Important material considerations in this case include national policy in the NPPF, the extent to which the development plan is up to date, and the ability of the Council to demonstrate the required 5 year housing land supply.

11. The development plan must be read 'as a whole' and compliance with it is to be taken 'as a whole', in accordance with settled caselaw[5].

12. In this case, the adopted development plan is the Local Plan Part 1 ('the CS') and Local Plan Part 2 ('the DSP'). Policy CS2 sets out a housing provision which is sought to be met by policy CS6 and the DSP; policies CS14 and DSP6 restrict development outside settlement boundaries and allocations in the DSP.

13. However, as CS2 is rooted ultimately in the now abolished South East Plan, the development plan strategy is not and does not purport to be based on an NPPF-compliant assessment of development needs. As such the housing requirement in CS2 is agreed to be out of date and the settlement boundaries to which CS14 and DSP6 apply are also agreed to be out of date and the weight of any conflict with them is agreed to be reduced accordingly, in line with the Supreme Court in *Hopkins Homes* at para. 63.

14. Further, and in addition, it is agreed that the Council cannot demonstrate the required 5 year housing land supply and footnote 8 and para 11(d) of the NPPF is engaged such that 'the most important policies' (which include CS2, CS6, CS14, CS17, DSP6 and

[3] CD 6.3
[4] CD 6.6
[5] Sulivan J in *R v Rochdale MBC (ex parte Tew)*

DSP40[6]) are deemed out of date such that any breach of them may be accorded reduced weight and (subject to HRA issues) the 'tilted balance' is to be applied.

15. In addition, in this development plan, the absence of a 5 year housing land supply engages the contingency policy, DSP40, which it is agreed operates as an exception to the otherwise restrictive policies, subject to its own five criteria. It is agreed that these five criteria set tests less restrictive than the policies to which it acts as an exception. It has been observed by both recent inspectors that, given the continued inability of the Council to be able to demonstrate the required 5 year housing land supply, they may be still too restrictive (or are being applied to restrictively)[7].

16. Further, it is agreed that DSP40 is itself a 'most important' policy and, so, is subject to the deeming provision in para. 11(d), such that it is itself 'out of date' and breach of any of its criteria may be reduced in weight accordingly in the planning balance. The parties are agreed[8] that this weight should be 'considerable', not full weight.

17. Lastly, as agreed by Mr Jupp in cross-examination[9], if there is compliance with all five criteria of DSP40, the development is in accordance with the development plan taken as a whole, and para. 11(c) of the NPPF is engaged as well as the presumption in s.38(6); conversely, it is agreed that if there is breach of DSP40, para. 11(d)(ii) is engaged[10] and the breach must be considered through the prism of the 'titled balance' such that permission should be granted unless the harms 'significantly and demonstrably' outweigh the benefits.

18. In this context, it is notable that the Council only alleges breach of DSP40(ii) and (iii) in part [criterion (v) is not a separate point], which will be assessed below. It accepts the locational suitability of the site under DSP40(ii) and (iii), its scale under (i), its deliverability under criterion (iv) and raises no free-standing objection under criterion (v)[11].

---

[6] Planning SoCG at para. 4.2
[7] CD 6.3 at para 110; CD 6.6 at para 45
[8] See Jupp proof 6.29 and confirmed Beuden rx, Day 5
[9] Jupp xx CBQC, Day 4
[10] Subject to SPA issues under 11(d)(i)
[11] Jupp xx CBQC, Day 4

19. In respect of the Inspector's main issues, Mr Jupp clarified[12] that RRef (i) [equivalent to Main Issue 2] was founded on an allegation of conflict with DSP40(ii) and (iii) and CS17 which, in turn, was contained within RRefs (ii),(iii) and (iv). He further confirmed, on the basis of Mr Russell-Vick's evidence, that RRef (ii) [equivalent to Main Issue 1] was limited to *visual* impact, not landscape character impacts, and that in turn it derived from the 'narrow'[13] design issues raised against this full application by Mr Russell-Vick under RRef (iii) and (iv) [equivalent to Main Issue 3].

20. It is therefore convenient to deal with the Main Issues sequentially as 2, 1 and then 3, before turning to the planning balance and conclusions.

Main Issue 2: 'harm (if any) *to the spatial character of the area by developing in land designated as 'countryside'':*

21. The Council has no objection to the development of this site for significant housing numbers[14], notwithstanding that it is outside the adopted settlement boundary and in the designated 'gap'. Indeed, the Council is actively promoting this site through its emerging [Reg 22] Local Plan, with an indicative 'around' 180 dwelling capacity. Further, while there is no evidence as to how the emerging 180 figure was arrived at[15] there is, equally, no evidence from the Council that 206 dwellings could not acceptably be accommodated on this site[16]. Indeed, Mr Russell-Vick acknowledged[17] that he could only take the detailed design points he did because the scheme before the Inspector is a full application, rather than in outline. Additionally, it is acknowledged that the site does not conflict with policy CS22 protecting the 'gap'.

22. Thus far from alleging harm to the spatial character of the area by developing this site, the Council are in support of its development. This is welcome and not surprising in the circumstances.

---

[12] ibid
[13] Mr Jupp's words
[14] Planning SoCG at 5.1, and PRV xx CBQC, Day 2 and Jupp xx CBQC, Day 4
[15] Jupp ix, Day 4
[16] Jupp xx CBQC, Day 4
[17] PRV xx CBQC, Day 2

23. First, it is now acknowledged, as submitted above, that the adopted settlement boundaries on which restrictive policies CS14 and DSP6 are founded are out of date being derived from the out of date assessment of development needs in CS2, which was ultimately based on the long-abolished, pre-NPPF South East Plan.

24. Secondly, the Council accepts that it cannot demonstrate the required 5 year housing land supply and so the restrictive polices CS14 and DSP6 are 'deemed' to be out of date and conflict with them only accorded limited weight.

25. Thirdly, the absence of a 5 year supply, as noted above, engages DPS40 as an 'exceptions' policy which allows development in the 'countryside' [and 'gap'], subject to criteria, compliance with which is judged on a site or scheme-specific basis, rather than amounting to an in-principle objection (indeed, DSP40 amounts to an in-principle support of development in the countryside, subject to those five scheme-specific criteria).

26. Fourthly, in this case, the site is acknowledged to be sustainably located in terms of accessibility, and well related to Stubbington, which is acknowledged to be a sustainable location for additional housing growth[18].

27. Fifthly, as noted above development of the site is not considered to adversely affect the function or integrity of the 'strategic gap' so as to offend policy CS22.

28. Sixthly, as noted below, the containment and landscape context of the site means that its development gives rise to no objectionable impact in terms of landscape character[19], and the allegation of harm to visual receptors is limited to the site's immediately adjacent setting[20] and is derived, it is said, not from the principle of significant residential development, but to a narrow set of design objections to the manifestation of those houses in this specific, detailed scheme[21].

29. Main Issue 2 can, therefore, be resolved in favour of the grant of permission.

---

[18] Planning SoCG para. 2.7
[19] PRV xx CBQC, Day 2
[20] RRef (ii)
[21] PRV proof 5.16

Main Issue 1: 'effect on the landscaper character and appearance of the area'

30. As just noted, the Council does not allege an unacceptable landscape *character* objection. RRef (ii) limits itself to 'visual' impacts and to visual impacts on the 'immediate countryside setting around the site'. In turn, as noted above, Mr Russell-Vick was clear that these visual impact objections were derived from what he described as design 'failings' in the scheme, rather than the principle of the development itself.

31. That latter position must be correct, given the Council's acceptance of the principle of significant housing on the site. It is inevitable that a greenfield development for significant housing will register an 'adverse' effect on landscape and visual interests at the level of the site and its immediate environs. But, in this case, the Council do *not* allege that that would justify withholding permission – indeed it cannot do so, given that it is promoting the site, and given the terms of the Planning SoCG at 5.1.

32. Thus, it was expressly agreed by Mr Russell-Vick[22] that the entries in the Council's columns in the Landscape SoCG Summary tables, Table 1 and Table 2 (and by extension, his proof of evidence), are *not* to be taken to undermine the acceptance of this site as suitable for significant housing development from a landscape and visual perspective. In addition, it was agreed that resolution of the design objections that he did take in his proof, whether by a 180 unit scheme as per his 'concept plan' or some other configuration of a 206 unit scheme, would not alter the entries in those two tables, either up or down.

33. This is important context to assessing the value of indulging in lengthy cross-examination[23] on the methodology of the Appellant's LVIA (which was actually in respect of the earlier 261 scheme) and the findings recorded against the various criteria there set out. The Council's *evidential*[24] case is that, even if one looks only at Mr Russell-Vick's recorded entries for landscape and visual impacts in LSoCG Tables 1

[22] PRV xx CBQC, Day 2
[23] As undertaken by Counsel for the Council
[24] Ie that propounded by PRV's evidence

and 2: (a) developing the site is unobjectionable in landscape and visual terms; and (b) that does not change whether the site is developed for 180 or 206 units.

34. Turning to what the objection amounts to:

35. First, the very limited geographic extent of the 'visual' impact identified in RRef (ii) is borne out by the summary tables in the Landscape SoCG, where only viewpoints 1-6 register a 'moderate' or above impact. With the exception of viewpoint 4, which is adjacent to the bird mitigation area, all these visual receptors are either on the development area, or at its immediate boundary. This reflects the visually well-contained nature of the site, bounded as it is by residential development on the east and south, and the cemetery on the west.

36. Secondly, the visual impact is in respect of receptors in a landscape agreed not to be a 'valued landscape' for the purpose of para. 174(a) of the NPPF and, hence, 'off the bottom of the scale' in the hierarchy identified in paragraph 175. Indeed, it is doubtless following the approach in para. 175 of the NPPF that the Council has identified this site for development, as we have seen, in its emerging Local Plan.

37. Thirdly, the visual receptors 1-6 are all experiencing the views in question in the context of the settlement of Stubbington, either looking out from the existing settlement, or looking back towards the existing settlement. Thus, development of the nature proposed in this appeal is not 'uncharacteristic' in the receiving landscape, even if it makes a marked (albeit acceptable[25]) change in the character of the site itself and, hence, to the views across it.

38. Fourthly, as Mr Russell-Vick candidly acknowledged[26], this limited visual impact to receptors in a non-valued landscape is only considered to be objectionable by reference to *'the detailed implications of those aspects of the scheme proposal that would give rise to visual changes on nearby receptors in the …scheme design at the edges of the site'*[27] which he proceeded to set out at paragraphs 5.17-5.36 of his proof.

[25] Even on the Council's case
[26] PRV xx CBQC, Day 2, reflecting PRV proof at 5.16
[27] PRV 5.16

39. These design objections found RRef (iii) and the remaining part of RRef (iv), and so fall under Main Issue 3, below. Suffice to say, here, that had this scheme been in Outline, the visual objection derived from a detailed layout could not have been mounted, let alone sustained. As it is, the Council's objection under RRef (ii) and Main Issue 1, limited as it is, is – as we can now see - wholly dependent on it sustaining the design objections under RRef (iii) and (iv) [ie Main Issue 3].

Main Issue 3: 'Whether the proposal would deliver an acceptable residential environment for future occupiers':

40. First, it is respectfully submitted that this Main Issue is correctly framed: will the scheme amount to an acceptable living environment?

41. The Council would doubtless like to re-cast it as 'would the scheme amount to 'good design'?' But, while 'good design' or 'high quality design' or 'beauty' are all terms to be found in the NPPF, there is no yardstick by which to judge them and differing commentators (including witnesses and decision-makers) can vary in their judgements as to whether or not particular schemes (or – here- specific limited details of a particular scheme) amount to 'good design'. Moreover, differing designers might, to the same spec and brief, quite reasonably come up with markedly different proposals, any or all of which may be considered 'good design', despite their obvious differences. Lastly, as Mr Russell-Vick, acknowledged, even the recognition that one design is 'better' than another, does not necessarily mean that the other one not, itself, 'good design'.

42. These are important (and, in the end, undisputed[28]) considerations when considering an objection which alleges that permission should be refused because certain details of the scheme before the Inspector do not constitute 'good design'. Mr Russell-Vick is perfectly entitled to record that he would 'prefer' to see *x* to *y*, or a little more *a* and a little less *b*. That does not mean that the presence of y or the preponderance of b means that the scheme before the appeal is not 'good design'. If the scheme did not promise to deliver an acceptable residential environment for future occupiers, that would be another thing entirely. But that is not the case, here.

[28] PRV xx CBQC, Day 2

43. It is worth, then, exploring what the design objections at Mr Russell-Vick's paragraphs 5.17-5.36 actually amount to.

44. We can start by recognising the 'double counting' at para's 5.33-5.36 as Mr Russell-Vick acknowledged even in evidence in chief that these essentially repeated his 'edge of development' design objections at 5.17-5.27.

45. Then we can discount those objections which can be overcome by conditions: namely his objection to yet more off-site pedestrian connections at 5.30-5.32 and the surfacing of the 'trim trail' at 5.29.

46. That, essentially leaves three design objections: disposition of the POS and green corridors within the site; the use of 2.5 storey buildings in certain locations; and the treatment of the boundary with the cemetery and Oakcroft Lane.

47. Taking those in turn:

48. It is first worth observing that the objection to the disposition of the POS areas and the link between them within the site are an aspect of Main Issue 3 which is not claimed to support RRef (ii) (as that concerns the impacts arising from the treatment of the 'edges' of the site – see Mr Russell-Vick at para. 5.16). Additionally, it is worth observing that Mr Russell-Vick did not allege that the POS proposed had any functional failure, in terms of its size, location or disposition[29]. Rather, it was his 'preference' to see it gathered in one place in the centre of the site.

49. That is not, in truth, an allegation that the scheme proposed is not 'good design'; it is an indication that a different designer would have done it differently. In this case, as the evidence shows, the disposition of the POS areas and the link between them followed the indication by the Council's own urban design officer, Mr Lyster.

50. There are obvious design advantages to Mr Lyster's arrangement: more of the centre of the site is adjacent or in close proximity to the POS than would be the case with a single (albeit larger) block; it forms a greater part of the 'core' of the scheme. But even

[29] PRV ix, Day 2

allowing for merits in both suggestions, it can hardly be a complaint by the Council that the Appellant has chosen to follow the advice of the Council's own urban designer, who had provided a sketch proposal precisely in order to indicate how his previous objections could be overcome. There is room in this world of 'good design' for both solutions to be so, but it might be thought a brave applicant who sets aside the relevant officer's suggested solution.

51. As to the disposition of 2.5 storey houses, even as Mr Russell-Vick stated in evidence in chief that he had not seen the rationale of their distribution set out, he found himself recognising it: he observed that they were to be found fronting the open space, or at the end of an axis of road. This reflects the DAS, which describes the development zones, derived from the Lyster sketch, and notes, for example, that taller buildings are used to give enclosure to the POS[30]. Far from being a design objection, they are an example of good design, assisting in orientating the person on the ground and defining spaces – albeit only subtly: a 2.5m house stands a mere 1.78m taller than a 2 storey one[31].

52. That brings us to the treatment of the western and north western boundary.

53. First, Mr Russell-Vick is plainly wrong (by reference to the application plans and to the 3D modelling in Mr Dillon's evidence) to assert that the frontage to the cemetery is a continuous, flat frontage. It is varied along its length in building line, orientation, unit design and roof line. It is also set back from the boundary such that Mr Russell-Vick did not seek to suggest any overbearing or oppressive impact on users of the cemetery, or their sense of privacy. The existing hedge is substantial, and will be augmented, and street trees will be added. The principle of development is not objectionable and, it follows, the fact that development can be seen is not objectionable – indeed good design practice would indicate that development should be able to be seen; it is not something which should be hidden away as if we were ashamed of it.

54. That last observation may be applied to the 'crescent' on the north-west boundary to Oakcroft Lane. There is a row of substantial, mature poplars and this will be augmented by additional planting below and in front of them, but it was never the intention that

[30] CD1.5 at p.17
[31] ID12

this ‘softening’ of the outer edge should amount to a visual screen or barrier, such that development would not be seen. That is neither necessary nor appropriate.

55. This sets the context for Mr Russell-Vick’s concerns about whether planting under the poplars would ‘thrive’. First, a little care must be taken with this evidence: it started very fairly with an expression that the location was not ‘ideal’ and he raised a question about the effort required to make it take; as time went on, it morphed into an assertion that ‘perhaps as much as 50% may fail’ and seemed to gather speed as an objection – but in the context of an assertion that ‘houses would still be visible’.

56. In truth, the success of native hedge planting under established poplars can be observed in the vicinity of the site at Lychgate Green, but also, it must be remembered that Mr Russell-Vick had under-estimated the land available to be planted by between 2 and 4m[32], giving ample space for additional planting outside the canopies of the trees, all of which, along side the on-going maintenance (not just a re-plant within 5 years), can be secured by requiring a LEMP to be approved by condition.

57. But, moreover, the ‘vice’ Mr Russell-Vick identified was that ‘the development would still be visible’. Quite so. That was always the intention. The north-west boundary is a visual softening to the edge of the settlement, not an attempt to pretend that there is not significant residential development to the south of Oakcroft Lane – a phenomenon the Council is, here, actively promoting. It would, indeed, not be ‘good design’ to attempt to hide it.

58. As regards the ‘crescent’ itself, Mr Russell-Vick was again wrong, by reference to the plans and 3D model, to characterise this as a continuous ‘wall’ of development. It may very well be that such an approach could have been adopted (and represent the very best in urban design[33]) but the route chosen here was one of a ‘feathered’ edge – and that is what has been achieved.

59. Mr Russell-Vick focussed on the elevational ‘street views’, but on the ground, experience of views is ‘kinetic’ as one walks along Oakcroft Lane. The views through the trees and planting will be of large, detached houses, ‘splayed’ - as this is a convex

[32] PRV orally, Day 5
[33] One thinks of the crescents in Bath, Buxton, Regent’s Park and Edinburgh

curve – and whose ridges run parallel with the road, so the planes of the roof slope away from the viewer, while the gables present themselves obliquely to the viewer. The houses are separated one from the other, and the single-storey garages are set well back, again with the planes of the roof receding, such that there will be a continuous play of planes, volumes and spaces, with the gaps between the dwellings affording views to the gardens and wooded backdrop behind. There is no objection to the architectural language or form of the housing and, deployed in this way, the crescent precisely follows the intentions of the DAS in achieving a lower density on the edge of the site, while creating a sense of 'prestige' at the entrance to the settlement[34].

60. As such, the north-west quadrant is the very essence of 'good design': carefully considered, responding intelligently to the surroundings and presenting a beautiful living environment that amounts to an enhancement of the locale. This is what was also found by officers in the committee report[35]. Even Mr Russell-Vick only wanted 'two or three' houses removed to achieve the even looser feel he was after. It is respectfully considered that that is neither necessary nor, indeed, warranted. The scheme already successfully creates a beautiful place to live, precisely as Government policy says it should.

61. Mr Dillon is the witness one who has tested the scheme against SPD and national design advice[36], and his conclusions were not challenged. Main Issue 3 may be resolved in favour of the grant of permission.

Heritage:

62. A word needs to be said on heritage impact because although the Council does not identify any impact, Historic England and third parties have identified potential harm by developing in the setting of nearby designated heritage assets. No one has suggested anything other than 'less than substantial harm' for the purposes of the NPPF.

[34] CD1.5, p. 17
[35] CD 2.1 see para's 8.24-8.28
[36] Dillon proof Appx A

63. In response, the Appellants have commissioned the Cotswold Archaeology report at Appx 1 to Miss Beuden's proof. It also concludes that there is no heritage harm arising, but if and to the extent that there is any, it would be at the very bottom of the scale of 'less than substantial harm' for the purposes of para. 202 of the NPPF.

64. Any heritage harm is a matter of weight, following the approach of the High Court in the 'Barnwell Manor' case, but in this instance, the Council and the Appellant are agreed that: (a) there is no harm, and para 202 is not engaged; but also (b) if there is harm, it is manifestly outweighed by the public benefits of the scheme, such that para. 202 is met and the statutory duties under s.66(1) of the T&CP (LB&CA) Act 1990 are satisfied.

Habitats matters:

65. But for the recently raised issue of the potential for recreational disturbance on the New Forest SPA, all impacts under the Habitats Regulations had been agreed as overcome with the submitted application.

66. During the course of the appeal process, NE began to issue advice letters identifying potential recreational disturbance at the New Forest SPA, requiring mitigation (and has done so on this site for the outstanding 180 unit outline application, as well as in respect of Fareham's emerging Local Plan).

67. It is fair to say that NE's current stance is not uncontroversial, and it may be that no mitigation is required, but within the scope of this s.78 appeal, the Appellants have recognised the need for the competent authority to take a precautionary approach given the current state of scientific knowledge and advice.

68. On this basis, while it is the Council's view that Fareham Borough should be excluded from the ZOI, given the local geography and in line with the recommendations of Footprint Ecology report which founds these NE letters, the Appellants have offered mitigation through a discrete unilateral undertaking to provide a proportionate contribution to the adopted New Forest NPA Mitigation Scheme. This is in line with

the NE advice that such an approach would provide the competent authority with the necessary ‘certainty’, pending a strategic borough-wide solution to the issue.

69. What is incontrovertible is that the issue is to do with visits, not houses, and the propensity to visit declines rapidly with the distance the houses are from the SPA. There is indeed a statistical question-mark over the robustness of the 15.33 visits/person figure derived for Fareham, but – again as a precautionary measure, given that our Inspector will not be able to resolve that matter – the 15.33 multiplier has been used to calculate the contribution offered.

70. NFNPA are content to receive the sums offered, and their SPD Mitigation scheme is expandable to accommodate increased numbers and funding. FBC, while maintaining their borough-level position, agree that should the Inspector find there is a need for mitigation, this calculation provides the ‘certainty’ that the mitigation is sufficient in order to satisfy the tests in European law and conclude an ‘appropriate assessment’ favourably to the development.

Reasons for refusal (v)-(x):

71. It is agreed that these are all overcome by the provision of the s.106 and/or conditions. They no longer represent any reason for withholding planning permission.

The Planning balance:

72. For the reasons set out above, it is the Appellants’ strong conviction that this scheme accords with DSP40 and its five criteria. As such (as is agreed) it would be a proposal in accordance with the development plan ‘taken as a whole’ and benefit from the presumption in the first part of s.38(6) and in para. 11(c) of the NPPF.

73. If and to the extent that there is any breach of criteria (ii) or (iii) of policy DSP40, as alleged, it is agreed para. 11(d)(ii) and the ‘tilted balance’ is engaged due both to the out of date nature of the strategic policies and the absence of the required 5 year land supply. It is agreed, within that ‘tilted balance’ the policies caught by footnote 8 and

para 11(d) include CS2, CS6, CS14, CS17, DSP6 and DSP40 itself, all of which may, accordingly, have breaches of them given reduced weight.

74. The housing supply shortfall is agreed to be significant, it has also persisted and is persisting despite the existence of policy DSP40. The affordable housing situation is acute, indeed the performance of the Council is dire, as shown by its own figures[37]. Against a need of 220 affordable houses per annum, and a local plan target of 'at least 100' 'to avoid significant homelessness', the Council has not ever passed the 100 dpa mark since 2011; it delivered 27 in the last year, and 15 in the year before. Against its policy of seeking 40% of all housing as affordable, it again has not achieved even that; last year recorded 9% and the year before a mere 5%.

75. There is and can be no dispute that Fareham Borough Council is significantly failing in its duties to deliver housing and affordable housing and the provision of housing and affordable housing is to be afforded substantial positive weight.

76. In addition, the Newgate Lane N/S inspector gave economic benefits substantial weight; the same should apply here. There are further benefits from the provision of POS and significant bio-diversity net gains.

77. The site is located in a sustainable location, adding to a sustainable settlement marked for growth; the site itself is acknowledged by the Council to be suitable for significant residential development and is being actively promoted for allocation through the emerging local plan.

78. It is apparent, on proper analysis, that the Council's RREf (i) is dependent on its RRefs (ii)-(iv), there being no in-principle locational objection to the scheme. It is further apparent that RRef (ii) is dependent on RRefs (iii) and (iv), being limited to visual impacts to adjacent receptors said to be consequent on the design matters in RRefs (iii) and (iv).

79. For the reasons given above, and on the evidence of Mr Seymour and Mr Dillon, the Appellant does not accept the criticisms within RRefs (iii) and (iv). When properly analysed, and the ones able to be overcome by condition are stripped out, the already

[37] Beuden proof 5.13-5.21

'narrow' objections become wafer-thin indeed. The Appellant says the remaining points of difference (buffer planting, disposition of POS and the treatment of the built edge) are disagreements between different designers (with the Appellant siding with the Council's employed urban design officer) as to how to dispose housing on the site; not one of them amounts to a design 'failure' such that the scheme before the Inspector, developed with the assistance of the Council's urban designer, and satisfying officers so as to recommend approval, is anything other than 'good design'.

80. As such, the Appellant rejects the three remaining criticisms, and invites Inspector to do so, too. But it also puts them, as a theoretical exercise into the planning balance and asks, as she must, whether the many, manifest and substantial benefits of this scheme are *significantly and demonstrably* outweighed by Mr Russell-Vick's preference for a single POS rather than two, more planting in the buffer, and 'two or three' fewer houses in the north-west corner of the site.

81. It is respectfully submitted that that question cannot be, rationally, be answered other than in the negative. National policy at para. 11(d)(ii) would indicated that permission should be granted, in the public interest.

Conclusion:

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

CHRISTOPHER BOYLE QC

28th October 2021

Landmark Chambers,

180 Fleet Street,

London, EC4A 2HG.