

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEAL

APPEAL by **Foreman Homes** against the non-determination by **Fareham Borough Council** of an application for outline planning permission for the *'erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane'* on **Land East of Posbrook Lane, Titchfield, Fareham, PO14 4EY**

Planning Inspectorate Reference: APP/A1720/W/20/3254389

Local Authority's Reference: P/19/1193/OA

PROOF OF EVIDENCE OF
STEPHEN JUPP MRTPI
ON BEHALF OF
FAREHAM BOROUGH COUNCIL
IN RESPECT OF PLANNING MATTERS

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Appendices

NB: Appendices FBC.1 to FBC.10 are attached to the Council's Statement of Case.

FBC.11 Housing Supply Update with further information on the progress with each of the sites referred to in the February 2021 position paper.

FBC.12 Email from Steven Brown of Woolf Bond Planning dated 18th October 2021

1.0 INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1. I am a member of the Royal Town Planning Institute. I hold an Upper Second Bachelor of Arts (Honours) Degree in Town and Country Planning and a Master of Laws with Merit in Environmental Law.
- 1.2. I have been employed for some 34 years in town and country planning. I have been a self-employed planning consultant since April 2000. Previously, I was employed at Chichester District Council and Havant Borough Council.
- 1.3. I handle planning policy, landscape impact and enforcement issues on a daily basis. I have extensive experience in dealing with such issues at planning application stage. I have also given planning policy, landscape impact and enforcement evidence in the High Court and at public inquiries and hearings for both local authorities and developers.
- 1.4. I have been brought in by Fareham Borough Council (the Council) to act on their behalf in connection with appeal proceedings relating to this land. I undertook a site visit in October 2021. I am therefore familiar with the site and its surroundings.
- 1.5. Although I act on behalf of the Council, I understand my professional duty is to assist the Inspector by providing evidence which is true and has been prepared and is given in accordance with guidance produced by the Royal Town Planning Institute. In this regard I can confirm that the opinions expressed are my true and professional opinions.
- 1.6. The appeal is made against the failure of the Council to determine the Appellant's application for outline planning permission (with all matters reserved except access) for:

'Erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane'

- 1.7. My evidence first sets out the planning policy relevant to this appeal along with the relevant planning history. Then I consider the planning merits of the development, having regard to the latest housing supply figures and other material considerations including loss of BMV agricultural land; and, drawing on the conclusions of the Council's expert witnesses in respect of landscape and heritage matters.
- 1.8. The Council's heritage expert, Lucy Markham, has carried out a detailed analysis of the significance and setting of the heritage assets and the effect of the proposed development. This is based on the analysis she did for the First Appeal, which she has reviewed, and where relevant updated. Her evidence considers the following topics:
- The statutory provisions and policy considerations that apply to the determination of this Appeal;
 - The assessment of the site and previous scheme in the first Appeal decision;
 - Consultation responses on the current Appeal scheme;
 - The historic development of Great Posbrook and its relationship with Titchfield;
 - The special interest of the listed Barn and Farmhouse, and the contribution that their setting makes to the appreciation of their significance, with particular reference to their location in a historic farmstead;
 - The effect of the proposed development east of Posbrook Lane on the special interest of the listed Barn and Farmhouse, with particular reference to the ability to appreciate the significance of the buildings as part of a historic farmstead; and
 - The degree of harm to the listed buildings and the weight that this should be given in the planning balance.
- 1.9. The Council's expert landscape witness, Ben Croot, notes the following principal points of agreement between the parties (paragraph 2.1.5 of his Proof):
- The Appeal Site is not located within a statutory or non-statutory landscape designation. However, it forms part of a valued landscape, (in the sense of paragraph 174 (a) of the NPPF), which extends from the edge of Bellfield and includes the Lower Meon

Valley. It is also included within the Meon Valley Area of Special Landscape Quality under Policy DS3 of the emerging Fareham Local Plan;

- The Appeal Site is within the Lower Meon Valley Character Area as identified within the Fareham Landscape Assessment (2017);
- The Fareham Landscape Character Assessment also identifies the Appeal Site within the landscape type of the 'Open Coastal Plan: Fringe Character' at a more detailed level. However, it was concluded by the Inspector at the previous appeal this was based on historical data from the 1996 Fareham Landscape Character Assessment and the previous appeal site (which includes the Appeal Site) is more reflective of the Open Valley Side landscape type;
- The Proposed Development would have no significant nor material effects upon the functionality and integrity of the Meon Strategic Gap.

1.10. In the light of this he makes clear at 2.1.6 that his Proof of Evidence focusses on the main areas of disagreement which he considers to be:

- The influence of the settlement edge on the Appeal Site.
- The value, susceptibility, and consequently, the sensitivity of the Appeal Site.
- The impact of the Proposed Development on the character and visual amenity of the Lower Meon Valley.

1.11. Drawing on their expert opinions, and other material considerations, and assuming that habitat impacts are satisfactorily addressed and the unilateral undertaking executed, I find the appeal development to be contrary to Development Plan Policies CS14, CS16, CS17, CS21, DSP6 and DSP40 along with the Planning Obligations Supplementary Planning Document (SPD) in respect of Open Space provision. I also find conflict with paragraphs 174 and 202 of the Framework and policies DS1, DS3, HP4, HE1, HE3, and NE10 of the emerging Local Plan. I then undertake a planning balance, weighing up the identified harms against the identified benefits. I conclude planning permission should not be granted. The appeal should therefore be dismissed.

1.12. Throughout my proof references are made to documents provided by the both sides which are already before the Inspector and now form part of the Core Document list. If a document is listed as a Core Document I will use the prefix "CD" and if it is a document appended to the Council's Statement of Case I will use the prefix "FBC".

2. **APPEAL DEVELOPMENT AND SITE DESCRIPTION**

2.1 The Appeal Development is:

"Outline planning application for the erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane"

2.2 All matters are reserved except access. The application drawings and documents are provided at **CDA**.

Site Description

2.3 The 'Appeal Site' comprises the land edged-red on the submitted Site Location Plan (**CDA.7**). It comprises a field located to the south of the Bellfield housing estate and public open space on the south side of Titchfield and measures approximately 4 hectares in area.

2.4 The site is outside of any settlement boundary as defined on the adopted Local Plan Policies Map and is considered, for planning purposes, to be located within the countryside. The site is also designated as being within a Strategic Gap (The Meon Gap) in the adopted Local Plan.

2.5 As defined on the adopted Local Plan Policies Map, the site is an "Uncertain" Brent Geese and Wader Site. However, the site is identified in the Solent Waders & Brent Goose Strategy as being a Primary Support Area (F48B). It is also identified in the emerging Fareham Local Plan 2037 as being a BG&W Classification 2 - Primary Support Area.

2.6 The field is currently used for the grazing of horses. Two pedestrian public rights of way (Footpaths 34 & 39) cross the site.

2.7 The western edge of the site runs alongside Posbrook Lane where there is a mature hedgerow with a field gate set within it. Two dwellings set

in large plots and agricultural land lie on the opposite side of the lane. Approximately 300m to the north is the junction of Posbrook Lane with Coach Hill/Common Lane from where Titchfield village centre lies to the east, Warsash to the west, and access on to the A27 via St Margaret's Lane to the north. In the opposite direction to the south of the site, Posbrook Lane leads to the Solent coast and Hill Head.

- 2.8 Beyond the south-western edge of the site is a row of substantial and mature trees along the boundary with a cluster of dwellings at Posbrook House, Great Posbrook and Barn Close. The houses of Great Posbrook and the barn are Grade II* Listed Buildings. Some other houses in Barn Close are locally listed (on the Council's Local List of Buildings of Special Architectural or Historic Interest), as set out in Appendix 3 to the LPA's Historic Environment Background Paper, September 2020. These buildings are:

LB/8/172 - Cart shed & Pigsties at Great Posbrook Farm

LB/8/520 - Store to north west of eastern barn at Great Posbrook Farm

LB/8/521 - Small barn between cart shed and Great Posbrook

- 2.9 The land slopes away gently from west to east towards the Titchfield Canal and River Meon. Part of the adjacent field to the east of the Appeal Site is shown on the site location plan to be within the Appellant's control as indicated by being edged blue. Part of this field lies at a lower level again than the eastern edge of the Appeal Site and occupies the land between the site and the Titchfield Canal to the east. A line of trees stretches along the western bank of the canal whilst a public right of way (Footpath 48) runs alongside the other [east] side of the canal. Beyond that is the floor of the Meon Valley before the land rises again on the opposite side of the River Meon towards Titchfield Road (B3334).

3 DETAILS OF THE PUTATIVE REASONS FOR REFUSAL

Officer Recommendation

- 3.1 The appeal was lodged on 16th June 2020, the same day as Officers of the Council published the agenda for the following week's Planning Committee meeting. The Officer report recommended the application be refused (**CDC.1**). An update to the report the day before the meeting informed Members that an appeal had been lodged (**CDC.2**).

Planning Committee Decision

- 3.2 The Planning Committee resolved that had they been able to determine the application then they would have REFUSED planning permission for the following reasons (as the minutes of the 24th June 2020 Planning Committee meeting at **CDC.3** show):

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17 & CS18 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP5, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, and paragraphs 170 and 196 of the NPPF and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The application site lies outside of the defined urban settlement boundary on land which is considered to form part of a valued landscape. As a result the proposed development would result in a range of significant adverse landscape and visual effects, harmful to the landscape character, appearance and function of the countryside and failing to respect or respond positively to the key characteristics of the surrounding area;*
- c) The proposal would result in less than substantial harm to, and fail to preserve and enhance, the setting of nearby Grade II* Listed Buildings;*
- d) The proposal would result in the loss of best and most versatile agricultural land;*

- e) *In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;*
- f) *In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the loss of part of a Primary Support Area for Brent geese and waders;*
- g) *In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the additional generation of nutrients entering the water environment;*
- h) *In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;*
- i) *In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;*
- j) *In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- k) *In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.*

3.3 It is the view of the LPA that refusal reasons e) to k) are capable of being addressed through either a legal agreement and/or planning condition[s].

4 RELEVANT PLANNING HISTORY

4.1 The relevant planning history pertaining to the appeal site is set out briefly in paragraphs 1.4 and 1.5 of the Planning SoCG.

4.2 In this regard it is material to note that a previous outline application for up to 150 dwellings was refused by the Council on 14th December 2017 and an appeal was subsequently lodged (PINS reference APP/A1720/W/18/3199119). The appeal was heard by way of an inquiry held in November 2018 and a decision was issued on 12th April 2019. The appeal was dismissed. The appeal decision letter comprises **CDJ.2**.

4.3 In considering the appeal, the Inspector considered that there were 3 main issues (paragraph 12) comprising:

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

4.4 Paragraphs 20 to 31 dealt with the first issue, character and appearance and gap impacts.

4.5 At paragraph 28 the Inspector noted that there was some dispute as to whether the site was a valued landscape, noting that both parties accepted that the Lower Meon Valley had attributes that are above the ordinary. The Inspector concluded this paragraph by stating:

"On the basis of the evidence before me I have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent

with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape."

4.6 On this first issue the Inspector concluded at paragraph 31:

"Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22."

4.7 Paragraphs 32 to 45 dealt with the second issue, heritage asset impact.

4.8 Paragraph 36 set out the significance of the identified assets, stating:

"The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets."

4.9 At paragraph 44 the Inspector concluded that there would be harm to the setting of the listed buildings and historic farmstead. He continued:

"I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy."

4.10 Paragraphs 46 to 49 dealt with the final issue, loss of BMVAL with the Inspector concluding in paragraph 46 that the limited loss of Grade 3a land (4.1ha) would not trigger the sequential test in the Framework footnote 53 as significant development¹. The Inspector concluded [49] that this limited loss should be ascribe limited weight in his overall planning balance.

4.11 The Inspector considered the benefits of the scheme (at paragraphs 54 to 56) and the unilateral undertaking that had been provided (at paragraphs 57 to 59).

4.12 The Inspector's planning balance is set out in paragraphs 60 to 70 of the decision letter.

4.13 At [64] the Inspector concluded on the heritage impact as follows:

"On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d

¹ Now footnote 58 to paragraph 175

tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land."

4.14 As the tilted balance was not engaged the Inspector continued on the basis of a 'straight balance', stating at [66]:

"Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2."*

4.15 The Inspector concluded on policy at [68] as follows:

"I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole."

4.16 The appeal was dismissed.

5 **PLANNING POLICY CONTEXT**

- 5.1 By Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 local planning authorities and Inspectors must determine applications for planning permission and appeals in accordance with the development plan (here, so far as relevant, the Local Plan Parts 1, 2 and 3) unless material considerations indicate otherwise. This section of my proof sets out the relevant planning policy framework for the consideration of this appeal.
- 5.2 The relevant planning policy is set out in section 5.0 of the LPA's Statement of Case and summarised in Section 4 of the Planning SoCG. However, since the LPA's Statement of Case was issued a new NPPF has been released and the emerging Local Plan has been submitted for independent examination.
- 5.3 The following policies are particularly relevant to the issues at this appeal. I consider that further elaboration is required in order to explain the Council's case.

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011 [CDE.1]

- 5.4 **Policy CS2** (Housing Provision) makes provision for the supply of 3,729 dwellings in the period 2006 to 2026 from various identified sources of supply (none of which is applicable to the Appeal proposal).
- 5.5 **Policy CS4** (Green Infrastructure, Biodiversity and Geological Conservation) makes provision for, among other things, the protection of important habitats. It emphasises that, where possible, sites will be enhanced. It specifically addresses mitigation of impacts on European sites and states that "Development likely to have an individual or cumulative adverse impact [on European sites] will not be permitted unless the necessary mitigation measures have been secured."

5.6 **Policy CS5** (Transport Strategy and Infrastructure) states that the Council will permit development which:

- *contributes towards and/or provides necessary and appropriate transport infrastructure including reduce and manage measures and traffic management measures in a timely way;*
- *does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes;*
- *is designed and implemented to prioritise and encourage safe and reliable journey's by walking, cycling and public transport.*

5.7 **Policy CS6** (The Development Strategy) states that development will be focussed in various specified areas, which do not include the Appeal Site. It goes on to state that, in identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries (which the Appeal Site lies outside of). It states that opportunities will be taken to achieve environmental enhancement where possible. It also states that 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.

5.8 **Policy CS14** (Development Outside Settlements) states that:

'Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agricultural, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible. In coastal locations, development should not have an adverse impact on the special character of the coast when viewed from the land or water.'
(emphasis added)

5.9 **Policy CS16** (Natural Resources and Renewable Energy) makes clear that new development will be expected to safeguard the use of natural

resources by, inter alia, preventing the loss of the best and most versatile agricultural land.

5.10 **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 demonstrate adherence to the principles of urban design and sustainability to help create quality places. In particular development will be designed to:

- respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials,"

5.11 **Policy CS18** (Provision of Affordable Housing) states that, on sites that can accommodate 15 or more dwellings, developers will be expected to provide 40% affordable units.

5.12 **Policy CS20** (Infrastructure and Development Contributions) states that Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider, and that contributions or provision may also be required to mitigate the impact of development upon infrastructure.

5.13 **Policy CS21** (Protection and Provision of Open Space) states that proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided in accordance with specified requirements.

5.14 **Policy CS22** (Development in Strategic Gaps) makes provision for the protection of Strategic Gaps. The Appeal Site sits within the Meon Gap, but as noted at paragraph 4.6, the Inspector in the previous appeal did not consider there to be a significant adverse effect on the strategic gap. For this reason the LPA do not allege any harm to the strategic gap in this current appeal.

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

5.15 **Policy DSP1** (Sustainable Development) states:

'When considering development proposals, the Council will take a positive approach that reflects the "presumption in favour of sustainable development" contained in the National Planning Policy Framework. It will always work proactively with applicants to find solutions that enable proposals to be granted permission wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application, or where relevant policies are out-of-date at the time of making the decision, the Council will grant permission, unless material considerations indicate otherwise. This will include taking into account whether or not:

- i. the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; and/or*
- ii. specific policies in the National Planning Policy Framework indicate that development will not be supported.'*

5.16 **Policy DSP5** (Protecting and Enhancing the Historic Environment) states:

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

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

Proposals that provide viable future uses for heritage assets, that are consistent with their conservation, will be supported.

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

Listed Buildings will be conserved by:

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

Development affecting a conservation area will be permitted where it preserves or enhances its character, setting and appearance, and

- a) takes account of the relevant Conservation Area Character Appraisal and Management Strategy;*
- b) does not involve the loss of important features of an individual building that contribute to character and appearance of the conservation area and /or its setting;*
- c) its form, bulk, scale, height, massing, alignment, proportion, material, building form and use are appropriate, including having regard to the surrounding buildings, spaces and views; and*
- d) it does not involve the demolition or partial demolition of a building or structure that positively contributes to the area, without clear and convincing justification.*

The Council will conserve Scheduled Monuments, and archaeological sites that are demonstrably of national significance, by supporting proposals that sustain and where appropriate enhance their heritage significance. Proposals that unacceptably harm their heritage significance, including their setting, will not be permitted.

Non-designated heritage assets including locally listed buildings, historic parks and gardens, and sites of archaeological importance will be protected from development that would unacceptably harm their Architectural and historic interest, and/or setting taking account of their significance.”

5.17 **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)

- 5.18 **Policy DSP13** (Nature Conservation) makes provision for the protection of nature conservation interests. The policy states the circumstances in which proposals may be permitted notwithstanding detrimental impacts, though it notes that this does not apply to impacts on SPAs, where stricter tests apply (under the Conservation of Habitats and Species Regulations 2017).
- 5.19 **Policy DSP14** (Supporting Sites for Brent Geese and Waders) sets out an approach for development on "uncertain" or "important" sites for Brent Geese and/or Waders. As noted above, the Appeal Site is an "uncertain" site in the LPP2 Policies Map. This reflects the categorisation of the site under the previous 2010 version of the Solent Waders and Brent Goose Strategy. Under the current 2020 Strategy (**CDH.3**), the Appeal Site is part of a Primary Support Area (F48B). Policy DSP14 expressly allows for the classification of sites to be updated, and I consider that, as a Primary Support Area (the second highest categorisation under the Strategy), the site is "important" for the purposes and consideration of Policy DSP14. Policy DSP14 sets out that where an adverse impact on the integrity of the SPA cannot be mitigated, planning permission is likely to be refused.
- 5.20 **Policy DSP15** (Recreational Disturbance on the Solent Special Protection Areas (SPA)) requires mitigation of recreational impacts of development on the Solent SPAs through, among other approaches, financial contributions.
- 5.21 **Policy DSP40** (Housing Allocations). The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 (Housing Allocations) makes provision for a situation where there is a shortfall in HLS.

5.22 Having set out the approach to allocated sites for housing, DSP40 then addresses the policy approach to be applied where (as is currently the case) a five year supply of housing cannot be demonstrated:

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

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

5.23 The supporting text to DSP40 explains at 5.163-4 and 5.166 that:

"5.163 The Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery of both allocations and/or commitments. Therefore, further flexibility in the Council's approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets.

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

5.166 Protecting the character and beauty of the countryside is an important objective and so the careful design of any proposal will be a key consideration. Any proposal must be adjacent to an existing urban area boundary and sensitively designed to ensure

it is as well related, and integrated, to the neighbouring settlement as possible. Proposals that minimise the impacts on the countryside and, where relevant, Strategic Gaps will be preferred. Any proposal will also need to demonstrate that there will be no unacceptable environmental, amenity or traffic implications and that all other relevant Policies in the Local Plan have been duly considered."

- 5.24 This policy was found sound by the Local Plan Inspector in his May 2015 report on the LPP2 (**CDE.4**). The Inspector recommended that the policy was modified to include criteria for residential development to be considered against in the context of a HLS shortfall. The adopted policy was modified in line with the Inspector's recommendations. Policy DSP40 is consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year land supply cannot be demonstrated. The inherent flexibility in DSP40 ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 60 on '*significantly boosting the supply of homes*', whilst providing decision-makers with a framework to ensure that other considerations (including environmental considerations) – the importance of which are also recognised by national policy - are addressed.

Local Plan Part 3: The Welborne Plan – Adopted June 2015 **[CDE.6]**

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

Emerging Local Plan 2037

- 5.26 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).

- 5.27 On 2nd October 2020 the Council approved a publication version of its emerging Local Plan under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and a six-week period of public consultation took place between 6th November and 18th December 2020. The emerging Local Plan was then revised in the light of changes to the Planning Practice Guidance. On 10th June 2021 the Council approved a revised version of the emerging Local Plan (**CDF.5**) for publication under Regulation 19. The consultation opened ran for six weeks from 18th June 2021 until 30th July 2021.
- 5.28 It is relevant to note at this stage that Natural England objected to the Revised Local Plan on the basis of the detrimental impact that new housing sites could have on the New Forest SPA/SAC/Ramsar. Their letter is attached at **CDH.14**
- 5.29 The Council submitted the Regulation 22 Fareham Local Plan 2037 and supporting documents to the Secretary of State for independent examination on 30th September 2021.
- 5.30 The Council's current Local Development Scheme (LDS) (**CDF.6**) was adopted in June 2021. The Council has met the timetable for submission for independent examination (Autumn 2021). Under the LDS, the emerging Local Plan is expected to be subject to independent examination in Winter/ Spring 2021/ 2022 (Regulation 24) and adopted in Autumn/ Winter 2022 (Regulation 26). I therefore consider that some weight can be attached to the emerging plan.
- 5.31 The Appeal Site is within the countryside and Strategic Gap in the emerging Local Plan. Chapter 3 of the Plan sets out the Council's Development Strategy with all 3 policies [DS1, DS2 and DS3] being of direct relevance. These policies are also confirmed in the Plan to be strategic policies to address the priorities for the development and use of land in the Borough.
- 5.32 **Policy DS1 (Development in the Countryside)** is a countryside restraint policy setting out those circumstances in which new

development will be permitted in the countryside. In addition, it sets out a number of requirements that acceptable development will have to demonstrate and these include:

- i) Require a location outside of the urban area, and*
- j) Conserve and enhance landscapes, sites of biodiversity or geological value and soils, and*
- k) Recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap, and*
- m) Are not on Best and Most Versatile agricultural land.*

5.33 **Policy DS2 (Development in the Strategic Gaps)** seeks to prevent the coalescence of urban areas and to maintain the separate identity of settlements. The policy makes that that:

Development proposals will not be permitted where they significantly affect the integrity of the gap and the physical and visual separation of settlements or the distinctive nature of settlement characters.

5.34 **Policy DS3** relates to Landscape with paragraph 3.50 referring to two recent housing appeal decisions, stating:

"Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions were on sites located in the Lower Meon Valley (Land west of Old Street, Stubbington APP/A1720/W/18/3200409 and Land east of Posbrook Lane, Titchfield APP/A1720/W/18/3199119) and the Inspectors recognised the high-quality landscape concluding that the Lower Meon is a valued landscape."

5.35 In this regard, the Appeal Site is designated as an Area of Special Landscape Quality on the Policies Map. **Policy DS3 (Landscape)** states:

"Areas of Special Landscape Quality have been identified in the Borough and are shown on the Policies map. Development proposals shall only be permitted in these areas where the landscape will be protected and enhanced. Development in the countryside shall recognise the intrinsic character and beauty of the countryside, paying particular regard to:

- a) Intrinsic landscape character, quality and important features;*
- b) Visual setting, including to/from key views;*

- c) *The landscape as a setting for settlements, including important views to, across, within and out of settlements;*
- d) *The landscape's role as part of the existing Local Ecological network;*
- e) *The local character and setting of buildings and settlements, including their historic significance;*
- f) *Natural landscape features, such as trees, ancient woodland, hedgerows, water features and their function as ecological networks; and*
- g) *The character of the Borough's rivers and coastline, which should be safeguarded.*

Major development proposals must include a comprehensive landscaping mitigation and enhancement scheme to ensure that the development is able to successfully integrate with the landscape and surroundings. The landscaping scheme shall be proportionate to the scale and nature of the development proposed and shall be in accordance with the enhancement opportunities specified in the Council's Landscape Sensitivity Assessment."

- 5.36 Chapter 4 deals with Housing Need and Supply with Table 4.1 indicating a Total Housing Requirement to 2037 of 9,556 dwellings. Table 4.2 sets out the supply, based current and proposed allocations along with outstanding permissions. These indicate a supply of 10,594, thus providing a contingency provision of 1,038 dwellings.
- 5.37 **Policy H1 (Housing Provision)** makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources (not including the Appeal Site unless it were to come forward as an unexpected windfall development).
- 5.38 **Policy HP1 (New Residential Development)** states that residential development in locations outside of the Urban Area boundary will be permitted where one of two factors (neither of which apply in this case) applies.
- 5.39 **Policy HP4 (Five-Year Housing Land Supply)** applies where the Council cannot demonstrate a five-year supply of land for housing and broadly mirrors the wording of LPP2 Policy DSP40.

- 5.40 **Policy HP5 (Provision for Affordable Housing)** states that, on greenfield sites that can accommodate 10 or more dwellings or with an area of 0.5ha or more, developers will be expected to provide 40% affordable units.
- 5.41 **Policy NE1 (Protection of Nature Conservation, Biodiversity and the Local Ecological Network)** states that development will be permitted where, among other things, designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations.
- 5.42 **Policy NE3 (Recreational Disturbance on the Solent Special Protection Areas (SPAs))** requires mitigation of recreational impacts of development on the Solent SPAs.
- 5.43 **Policy NE4 (Water Quality Effects on the Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites of the Solent)** states that planning permission will be granted where the integrity of the designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.
- 5.44 **Policy NE5 (Solent Wader and Brent Goose Sites)** seeks to protect sites used by Solent Waders and/or Brent Geese from adverse impacts commensurate to their status in the hierarchy of the Solent Wader and Brent Geese Network. The Appeal Site is part of a Primary Support Area shown on the Policies Map.
- 5.45 **Policy NE10 (Protection and Provision of Open Space)** requires residential development to provide open and play space to meet the needs of new residents.
- 5.46 **Policy TIN4 (Infrastructure Delivery)** requires provision of and contribution towards the delivery of new or improved infrastructure, or other mitigation, to mitigate the impacts of development.

5.47 Chapter 11 deals with Design with the supporting text to **Policy D1 (High Quality Design and Placemaking)** noting at paragraph 11.3 that:

"The NPPF, as supported by Planning Practice Guidance (PPG), and the National Design Guidance (NDG) and the National Model Design Code (NMDC), states that that the design quality of new development is more than just the appearance, form, materials and detail of buildings. It includes the arrangement of buildings within a layout, how close together they are, the spaces in between buildings, the views and vistas they create, landscape and planting, biodiversity, other uses and activities, the richness of users' experience both visual and rural, and how they connect with existing and proposed essential services and facilities."

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

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

5.49 **Policy D1** itself states:

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

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

- 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."*

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

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

5.51 **Policy D2 (Ensuring Good Environmental Conditions)** states that development proposals will be permitted where they, among other things, do not, individually, or cumulatively, have an unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land, or the wider environment.

5.52 Chapter 12 deals with the Historic Environment and policies HE1, HE3 and HE5 are considered to be relevant.

5.53 **Policy HE1 (Historic Environment and Heritage Assets)** states:

"All development should seek to conserve and enhance the historic environment and heritage assets, in line with local and national policy. The Council will take appropriate positive steps to conserve and enhance the Borough's historic environment and heritage assets."

5.54 **Policy HE3 (Listed Buildings and Structures and/or their Settings)** states:

"Where a development would affect a listed building/structure and/or its setting, proposals should preserve or enhance any features of special architectural or historic interest they possess, proposals must demonstrate sufficient understanding of and respond to the historic environment by ensuring that:

a) Proposals to alter or extend listed buildings/structures, are accompanied by a Heritage Statement, which provides sufficient detail and is proportionate to the proposal and describes:

1. the significance of any heritage assets affected, including any contribution made by their setting; and

2. the principles of the proposal and its impact on the building; and

3. why the works proposed are desirable or necessary;

b) Proposals are of a well-considered design which ensure that any development is appropriate in terms of style, scale, density, height, materials, architectural features and detailing; and

c) Changes of use are compatible with and respect the special architectural or historic interest of the heritage asset or its setting and;

d) Demolition of structures within the curtilage of a listed building are supported by robust evidence demonstrating that the structure is beyond meaningful use or repair or is not of special architectural or historic interest as a structure ancillary to the principal listed building.

Great weight will be given to the conservation of listed buildings/structures (the more important the asset, the greater the weight will be). Proposals which would cause substantial harm to or the total loss of the listed building/structure will be refused unless it can be demonstrated that such a proposal would provide substantial public benefits which would outweigh the harm caused to the listed building/heritage asset.

Where total or partial loss of a listed building/structure is to be permitted, the Council may require that:

e) A scheme for the phased development and redevelopment of the site providing for its management and treatment in the interim is submitted to and approved by the Council. A copy of the signed contract of the construction work must be deposited before construction commences;

f) Where practicable, the listed building/structure is dismantled and rebuilt or removed to a site previously approved;

g) Important features of the listed building/structure are salvaged and reused;

h) There is an opportunity for the appearance, plans and particular features of the listed building/structure to be measured and recorded;

i) Provision is made for archaeological investigation by qualified persons and excavation of the site where appropriate.

Proposals which would cause less than substantial harm to the significance of the heritage asset will be considered against the other public benefits to be gained. Proposals will be assessed in accordance with the NPPF and the Council will give great weight to the desirability of preserving the listed building/structure, its setting or any features of special architectural or historic interest."

5.55 Finally, **Policy HE5 (Locally Listed Buildings and Non-designated Heritage Assets)** states:

"Non-designated heritage assets recorded on the Council's list will be protected from development that would unacceptably harm their architectural and historic interest, and/or setting taking account of their significance.

Development proposals which would affect the significance of a non-designated heritage asset, including any contribution made by its setting, must include the following, in a manner proportionate to the asset's significance:

a) A description and assessment of the significance of the asset, including its setting, to determine its architectural, historical or archaeological interest; and

b) A description of the impact of the proposed works on the significance and special character of the asset; and

c) Justification for the works, especially if these would harm the significance of the asset or its setting, so that the harm can be weighed against public benefits.

Where development would demonstrably harm the significance and/or setting of a non-designated heritage asset, consent will

*be refused unless it can be demonstrated that this harm is outweighed by public benefits.
The Council will consider whether spot-listing is warranted, as appropriate.”*

National Planning Policy Framework (2021)

5.56 The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely plan-led (paragraph 15).

5.57 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. It states, so far as material:

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

...

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, 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 proposed⁷; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

5.58 Footnote 7 states that the policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.

- 5.59 Footnote 8 states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 5.60 National policy on design has been substantially strengthened in the revised Framework. Chapter 12 of the Framework. "*Achieving well-designed places*" has been significantly revised.
- 5.61 The overarching social objective of the planning system now has "*beautiful*" added to the previous requirement to provide "*a well-designed, [beautiful] and safe built environment*". There is no definition of "beautiful", which is necessarily context specific.
- 5.62 In respect of valued landscapes² paragraph 174 of the Framework makes clear that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes [174a]. Paragraph 174 also requires decisions to recognise the intrinsic character and beauty of the countryside, including inter alia, the economic and other benefits of the best and most versatile agricultural land [174b].
- 5.63 Paragraph 174a also requires decisions to protect and enhance sites of biodiversity value and further provision is made on this issue in paragraphs 179 to 181. Paragraph 182 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

² It is agreed by both parties in paragraph 13 of the Landscape SoCG that the appeal site forms part of a valued landscape

5.64 Finally, Paragraphs 199 to 208 of the Framework set out how to consider the potential impacts of development on heritage assets. In this regard paragraph 199 makes clear:

"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."

5.65 Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.

5.66 In terms of how to deal with situations where less than substantial harm is found to exist, paragraph 202 states:

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

6 PROPER APPROACH TO DETERMINING THIS APPEAL

Habitats Legislation

- 6.1 The Inspector is the competent authority under the Habitats Regulations for the purposes of this Appeal. If otherwise minded to grant permission, the Inspector is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to conduct an appropriate assessment of all likely significant effects (i.e. those effects that cannot be excluded beyond a reasonable scientific doubt). The requirements are summarised in **R (Mynydd y Gwynt Ltd) v Business Secretary** [2018] P.T.S.R. 1274 (**CDK.9**) and **R (An Taisce) v SSECC** [2015] Env. L.R. 2 (**CDK.14**). For the appropriate assessment to be “passed” the Inspector must be certain beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Site in perpetuity. If the Inspector is not certain beyond a reasonable scientific doubt that the Appeal scheme will not (alone or in combination with other plans or projects) adversely affect the integrity of a European Site, permission has to be refused unless the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the Appellant does not suggest. A planning balance therefore only needs to be conducted if the Inspector is able to exclude any adverse effects on integrity beyond a reasonable scientific doubt.
- 6.2 At the time of writing, there are outstanding matters between the parties on habitats issues, and also an issue with Natural England, which I explore in section 8 below.

The Section 38(6) test

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

or conflicts with the adopted development plan policies and the development plan as a whole. The decision maker must then turn to other material considerations.

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

- 6.4 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”) [CDK.4] 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 [CDK.18], 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.

Housing Land Supply

- 6.5 The approach to considering the extent of the housing land supply shortfall is considered in **Hallam Land Management Ltd v SSCLG** [2018] EWCA Civ 1808 (CDK.8) at paragraphs 51 and 52. In this case, common ground has been reached on housing land supply issues, which I address in section 7 below. In particular, it is agreed that the Council is currently unable to demonstrate a five year supply, as a

result of which the presumption in favour of sustainable development under paragraph 11(d) of the NPPF is engaged unless disapplied on habitats grounds by virtue of paragraph 182 (5YHLS SoCG para 2.2).

The Materiality of the Previous Appeal Decision

- 6.6 The previous Appeal decision on this site which I have summarised in section 4 above, is clearly relevant. The findings of the previous Inspector are not binding, but there is a principle of consistency in planning which means that before disagreeing with the previous Inspector, the current Inspector should have regard to the importance of consistency and give reasons for any departures from the previous decision (**North Wiltshire District Council v Secretary of State for the Environment** (1993) 65 P. & C.R. 137 at 145 [**CDK.30**]).

Heritage Issues

- 6.7 Putative refusal reason c) alleges that the proposal would cause harm to the setting (and hence the significance) of two Grade II* listed buildings, namely: the former farmhouse and the barn.
- 6.8 It is the opinion of the Council's expert heritage witness, Lucy Markham, that the appeal development would cause less than substantial harm to the setting of the two Grade II* listed buildings, albeit at the lower end of the scale.
- 6.9 Ms Markham sets out a detailed summary of the statutory provisions and policy considerations governing heritage issues in section 4 of her Proof of Evidence, to which I refer. As she explains, by virtue of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, decision makers are required to give "considerable importance and weight" to the conservation of designated heritage assets, and if a proposal would (as the Council considers to be the case here) cause any harm to their significance, there is a statutory "strong presumption" against granting permission: **East Northamptonshire District Council v Secretary of State for Communities and Local**

Government [2015] 1 WLR 45 (or 'Barnwell') [**CDK.31**]. This is reflected in the NPPF, which requires "great weight" to be given to the conservation of designated heritage assets (paragraph 199) and "clear and convincing justification" for any harm (paragraph 200).

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

Weight to be Given to Adopted Development Plan Policies

Introduction

- 6.11 The weight to be afforded to LPP1 and LPP2 policies has been considered in a number of recent appeal decisions. I address the most recent decisions below as these seem to me to be the most relevant. I then offer my conclusions.

Recent Appeal Decisions

- 6.12 In the case of the *Land West of Old Street, Stubbington (CDJ.3)*, as with other recent appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial.
- 6.13 At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

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

- 6.14 It is important to note at this stage that this site was also within the Meon Valley and the same strategic gap as the appeal site. At paragraph 32 Inspector Downes had *"no doubt that the Lower Meon Valley is a valued landscape"*. In this regard she concludes at paragraph 38:

"The appeal site is an integral part of the Meon Valley landscape character area and in particular the lower section south of Titchfield. This landscape is valued for its quality, even though there is no designation in the current development plan. The proposed development would be unacceptably harmful to the character of the Lower Meon Valley and would fail to protect this valued landscape. The proposal would therefore conflict with policies CS14 in LPP1 and policy DSP6 in LPP2 and be contrary to Framework policy relating to the countryside and landscape."

- 6.15 At paragraph 39 she acknowledges that due to the housing land supply situation in Fareham the conflict with those policies has reduced weight and policy DSP40 is engaged.

- 6.16 In the final paragraph of the decision letter Inspector Downes concludes the Planning Balance and states:

"Notwithstanding the substantial benefits that would flow from the proposed development there would also be very substantial harms. In this case the conflict with the development plan and

the environmental harm that would ensue to the countryside within the valued landscape of the Lower Meon Valley is of compelling importance and outweighs the many advantages of the scheme. I have considered all other matters raised but have found nothing to change my conclusion that this would not be a sustainable form of development and that the appeal should not succeed."

- 6.17 The previous appeal decision letter dated 12 April 2019 at the current appeal site is of course highly relevant [**CDJ.2**] (and is referred to in the Newgate Lane (North) appeal [**CDJ.4**]). Here 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... These are two significant policies [DSP5 and DSP40] where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole."

- 6.18 In the *Land East of Downend Road, Portchester* appeal decision [**CDJ.1**] there was a difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). In this decision letter, dated 5th November 2019, at paragraph 90, Inspector Gould erred on the side of caution and considered the Appellant's housing figures to better represent the then 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."

- 6.19 In the case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham* (**CDJ.4**) as with other recent appeals, Inspector Jenkins did not see a need to determine the precise extent of the

shortfall but considered it to be substantial.

6.20 Inspector Jenkins found at paragraph 15 that, in the absence of a five year supply, the weight to be afforded to Policies CS14, CS22 and DSP6 was reduced because of their restrictive effect, and would be outweighed by compliance with Policy DSP40.

6.21 At paragraph 100, Inspector Jenkins considered that Policy CS16 was unduly onerous, when considered against the NPPF policy on best and most versatile agricultural land.

6.22 At paragraph 104, Inspector Jenkins found that:

104... LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements.

6.23 Inspector Jenkins went on to give "little weight" to the identified conflicts with policies CS14, CS22 and DSP6 (Paragraph 106).

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

108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.

109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.

110. *Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).*

111. *Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.*

6.25 In the recent case of *Land at Newgate Lane (East)* (**CDJ.17**), the Inspector used the LPAs figure of 3.57 years as a benchmark to assist in making his decision (paragraph 45).

6.26 At paragraph 13 Inspector Jones notes that it was common ground between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:

ii Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;

iii Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and

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

6.27 At paragraph 16 Inspector Jones refers to the Peel Common decision

[Newgate Lane (North) and (South)] in respect of the weight to be attributed to certain policies, stating:

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

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

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

I agree that policy DSP40 does not require adverse landscape and visual impacts to be *entirely* avoided. What is required by DSP40(iii) is that such impacts are minimised and reduced to levels that would not constitute unacceptable implications (to draw on the wording of criterion v). What is unacceptable will depend on the context, including whether the landscape is a valued landscape, where (all other things being equal) adverse landscape and visual effects are more likely to be unacceptable and in breach of DSP40. It is material to note that the Peel Common site was not within a valued landscape.

6.29 At paragraph 34, Inspector Jones concluded that the loss of Grade 3a BMV agricultural land (76% of the 4.1ha site) would breach LPP1 policy CS16 but would not be an unacceptable environmental implication in the terms of LPP2 Policy DSP40(v).

6.30 Finally, in the planning balance the Inspector sets out at paragraphs 45 and 46 the weight he attaches to various policies:

"45. FBC cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, FBC and the appellant agree that supply lies in the range of 0.95 to 3.57 years. Although it seems likely to be lower based on the evidence before me, I have used FBC's figure of 3.57 years as a benchmark to assist in making my decision. On that basis, the fact that the appeals development would be at odds with the area's strategy for the location of new housing and conflict, in that regard, with the development plan, including with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6, currently carries limited weight.

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

Conclusions on the weight to be afforded to Policy DSP40

6.31 A breach of policy DSP40 puts a development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led.

6.32 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF paragraph 60

on 'significantly boosting the supply of homes' and with the NPPF as a whole. Policy DSP40 is wholly consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year housing land supply cannot be demonstrated.

- 6.33 Having regard to the findings of the Inspectors in the above appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 8 of the NPPF, it can be afforded full (or at the very least very substantial) weight in the planning balance and conflict with it should therefore be a matter of the greatest consideration.

Conclusions on the weight to be afforded to Other Policies

- 6.34 As a result of the absence of a five year housing land supply, it is common ground that policies CS2, CS6 and DSP6 are out of date and that the weight to be attributable to conflicts with policies CS14 and CS22 is reduced, but only to the extent they derive from settlement boundaries that reflect out of date housing requirements (Planning SoCG paragraphs 4.4 and 4.5). I give those policies, or parts thereof, which specifically relate to the provision or location of new housing limited weight due to the housing supply shortfall. However, policies CS14 and DSP6 both contain criteria which to seek to control development which would adversely affect landscape character and appearance. Since the appeal site is within a valued landscape, the landscape protection elements of those policies are consistent with the NPPF and, in line with the Posbrook Lane decision (**CDJ.2**) (Paragraph 67) should in my view attract significant weight, rather than the limited weight attributed in the Newgate Lane North and South decision (**CDJ.4**) (Paragraph 106) and Newgate Lane East decision (**CDJ.17**) (Paragraph 45), where the landscape was not considered to be 'valued'.
- 6.35 I accept (in line with paragraph 100 of the Newgate Lane North and South decision) that policy CS16 is more onerous than the approach in paragraph 174(b) of the NPPF, but it is nonetheless broadly aligned

with the NPPF requirement that the economic and other benefits of best and most versatile agricultural land should be recognised in decisions, and so should in my view attract significant weight.

- 6.36 The remainder of the relevant policies are in my view consistent with the NPPF and should attract full weight.

Weight to be Given to Emerging Local Plan Policies

- 6.37 I consider that some weight can be attached to the emerging Fareham Local Plan 2037 and its policies, with the amount of weight being governed by the tests under paragraph 48 of the NPPF.

How should NPPF Paragraph 11(d) be applied?

- 6.38 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74 [CDK.10].
- 6.39 The proposal does not, in my view, accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.
- 6.40 NPPF Footnote 8 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 6.41 NPPF 11(d), which I set out in section 5 above, provides two tests. 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.
- 6.42 I consider that there are policies of this type in the Framework, as referenced at footnote 7 of paragraph 11(d) ('habitats sites' and 'designated heritage assets'). In respect of 'heritage assets' it is the Council's position that there is harm arising which is not outweighed

by the public benefits. In respect of 'habitats sites' it has not yet been established that there would be no adverse effects on the integrity of any European Sites (see section 8 of my Proof).

6.43 As to how what is now footnote 8 operates where a footnote 7 policy is in play, Sir Keith Lindblom, held at 28 of Monkhill:

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

6.44 Since there is a clear reason for refusal on heritage grounds (and currently on habitats grounds too) the tilted balance under paragraph 11 d) (ii) does not fall to be applied.

6.45 Even if there were not clear reasons for refusal on heritage and habitats grounds, I consider that the adverse impacts significantly and demonstrably outweigh the benefits, as I explain in section 10 below.

7 HOUSING LAND SUPPLY

Introduction

7.1 As set out in the 5YHLS SOCG, the parties have reached considerable agreement on five-year housing land supply issues:

- It is agreed that the five-year period to be used for the purpose of calculating the five-year housing land supply position for this Appeal is 1st January 2021 to 31st December 2025 (HLS SoCG Paragraph 3.1).
- It is agreed that the housing requirement falls to be measured against the local housing need figure calculated using the standard method (HLS SoCG Paragraph 3.2).
- It is agreed that the starting point derived from the standard method equates to 2,695 dwellings over the five-year period (or 539 dwellings per annum) (5YHLS SOCG para 3.3) but that this requires a 20% uplift, giving a five year requirement of 3,234 dwellings (HLS SoCG Paragraphs 3.3 to 3.5).
- It is agreed that the Council is unable to demonstrate a five-year supply of housing for the period 1st January 2021 to 31st December 2025 (5YHLS SOCG para 2.2). The Council considers the 5YHLS position to be 3.57 years while the Appellant considers it to be 0.93 years (HLS SoCG Paragraphs 4.1 and 4.2) with the respective positions summarised in Table 1 at para 4.3 and the supply differences set out in Appendix 1 of the HLS SoCG
- Whilst there is a disagreement on the extent of the shortfall, it is agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant; and as such (on **Hallam** principles) it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall (HLS SoCG Paragraph 5.3).

7.2 Therefore, as set out at paragraph 5.4 of the HLS SoCG neither party will call their respective witnesses to deal with housing land supply

matters, unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process. That said, I recognise that it is ultimately a matter for the Inspector's judgement whether he wishes to investigate the five year housing land supply in greater detail, and I have therefore set out in detail below the evidence to support the Council's position that it is correct in asserting that the current 5yr supply is 3.57 years.

The Five-Year Housing Requirement

- 7.3 Planning Practice Guidance (PPG) advice in respect of housing and economic needs assessment states that there is no requirement to specifically address under-delivery separately when determining what the housing requirement should be as the affordability adjustment is applied to take account of this. The only instance where past under-delivery is required to be taken into account is where an alternative approach to the standard method is used (Paragraph:011 Reference ID: 2a-01120190220).
- 7.4 The projected annual household growth should be based on 10 consecutive years, with the current year being used as the starting point from which to calculate growth over that period (PPG Paragraph 004 Reference ID: 2a-004-202001216). The 2014 based household projections use calendar years, not financial, and therefore the household growth has been calculated from 2021-2031 for a base date of January 2021. Paragraphs 427-428 of the Inspector's Report on the Land off Station Road, Long Melford appeal (APP/D3505/W/18/3214377) (CDJ.16) also judged that the starting point should be the current year. In this case the base date for supply is 1st January 2021.
- 7.5 The base date of 1st January 2021 means that the affordability ratios used in determining the housing requirement were appropriate. At that time the 2019 affordability ratios, published in March 2020, were the most recent as per the PPG. However, the Council acknowledges that in April 2021 the affordability ratio of 2020 was adjusted requiring a minimum local housing need of 541 dwellings per annum (dpa).

7.6 In light of this change in circumstances, the Council has updated its five-year housing land requirement based on the affordability ratio that now applies from 1st April 2021. On this basis, the updated housing requirement for the period 1st January 2021 - 31st December 2025 is 2,695 dwellings, based on a requirement of 508dpa for the 3 months 1st January – 31st March 2021 and 541dpa for the 4 years and 9 months between 1st April 2021 – 31st December 2025 – producing the agreed starting point housing requirement of 539dpa (5YHLS SoCG Paragraph 3.3).

7.7 As a result of the Housing Delivery Test results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement, giving a five year requirement of 3,234 dwellings for the period 1st January 2021 to 31st December 2025 (5YHLS SOCG para 3.4-5).

Five-Year Deliverable Housing Supply: Key Principles

7.8 In order to be considered deliverable (see page 66 of the NPPF) all sites must as a minimum have offered a suitable location for development at the base-date; they must have been available at the base date; and there must have been a realistic prospect of delivery within five-years from the base date of the assessment – this being 1st January 2021.

7.9 Additionally, permitted sites which do not involve major development and sites with detailed planning permission should be considered as deliverable sites unless there is clear evidence that new dwellings will not be delivered within five years.

7.10 Sites with outline planning permission for major development, sites allocated within the development plan, sites with the grant of planning permission in principle and sites identified on a brownfield register can only be considered deliverable where there is clear evidence that completions will begin on site within five years.

Fareham's Housing Delivery Test Action Plan

7.11 The Housing Delivery Test: 2020 measurement was published on the 19th January 2021 and confirmed that the Council had achieved 79% of the housing required for the Borough for the three years from 2017-2020. As such the Council has been required to produce an Action Plan in accordance with paragraph 75 of the NPPF and national planning guidance. One of the purposes of such Action Plans is to identify the measures already undertaken and those proposed to be undertaken in order to boost the delivery of new housing within Boroughs. The Fareham Borough Council Housing Delivery Test Action Plan was produced in May 2021 (**CDH.8**) and approved for publication in June 2021. It identifies the following measures that have been, or will be, adopted in order to boost the delivery of housing:

- Local Plan - priority will be given to the examination and subsequent adoption of the Local Plan.
- Welborne Garden Village is regarded as an essential part of the Council's ongoing housing delivery programme.
- Nitrate mitigation sites have been identified and are ensuring that residential sites subject to a resolution to grant planning consent are being approved
- Nitrate neutrality – lobbying of Government.
- Development management – in the form of releasing appropriate greenfield sites for development, working with developers in order to bring forward sites through the use of Planning Performance Agreements and, through the use of conditions, by requiring the implementation of consents within a relatively short time period.
- Developer engagement – to include regular updates of the Brownfield Register and regular call for sites.
- Affordable housing programme – the adoption of a new Affordable Housing Strategy and through identification of land owned by the Council.

- Fareham Town Centre Regeneration – the draft Local Plan focusses on the search for additional housing sites in sustainable locations in the Fareham Town Centre.

7.12 In the short time since June 2021 when the Action Plan was approved there has been significant progress in several areas. As already set out paragraph 5.29 of this Proof, the Council submitted the Fareham Local Plan 2037 for examination on 30th September 2021. This is in line with the Council's Local Development Scheme (LDS) which gives submission as being during Autumn 2021, Examination during Winter/Spring 2021/2022 and adoption in Autumn 2022. Furthermore, outline planning permission was granted for Welborne Garden Village, a new 6,000 home community north of Fareham, on the same day, 30th September 2021. With regards to the issue of nutrient neutrality, as stated in paragraphs 5.7 – 5.12 of the Action Plan the Council has agreements in place to enable several nutrient mitigation schemes to be available for development schemes in the Borough. At the time of preparing this Proof three such schemes are now in place delivering mitigation solutions for developers.

7.13 As a result of these positive actions, it is clear that the supply of housing has increased and that some delivery constraints have been overcome. As such, the Council considers that its housing land supply position has since considerably improved and is confident that, going forward, ongoing plan-led delivery will further improve the extent that the Council will be able to demonstrate a five-year housing supply position.

Overview of the Council's Position on the Deliverable Housing Supply

7.14 The most recent and publicly available five-year housing land supply position update was produced by the Council on 17th February 2021 (**CDH.7**) and gave a projected position of 4.2 years supply.

7.15 However, the Council now considers that it has a 5YHLS of 3.57 years, as set out in the Table below. The difference from the 17th February 2021 position comes from the changed housing requirement (rows A-E) and a decrease in delivery from dwellings with a resolution to grant planning permission that are expected to be built by 31st December 2025 (row I):

Fareham Borough – current Housing Land Supply Position

A	Local Housing Need: Dwellings per annum	539
B	Local Housing Need: Total requirement for 1 st January 2021 to 31 st December 2025 (A x 5)	2,695
C	20% buffer – delivery of housing over the previous 3 years has fallen below 85% of the requirement, as set out in the 2020 Housing Delivery Test results (B x 20%)	539
D	Total housing requirement for period from 1st January 2021 to 31st December 2025 (B + C)	3,234
E	Annual requirement for period from 1 st January 2021 to 31 st December 2025 (D/5)	647

	Net outstanding planning permissions for small sites (1-4 units expected to be built by 31 st December 2025 (discounted by 10% for lapses)	69
G	Net outstanding full planning permissions for large sites (5 or more units) expected to be built by 31 st December 2025	402
H	Net outstanding outline planning permissions for large sites (5 or more units) expected to be built by 31 st December 2025	296
I	Dwellings with a resolution to Grant Planning Permission that are expected to be built by 31 st December 2025	1132
J	Dwellings allocated in Adopted Local Plan that are expected to be built by 31 st December 2025	33
K	Dwellings from brownfield register sites that are expected to be built by 31 st December 2025	276

L	Small site windfall allowance (years 4-5) (51dwellings x 2 years)	102
M	Expected housing supply for the period from 1st January 2021 to 31st December 2025 (F+G+H+I+J+K+L)	2,310
N	Housing Land Supply Position over period from 1 st January 2021 to 31 st December 2025 (M-D)	-924
O	Housing Supply in Years (M/E)	3.57

7.16 To assist the Inspector, an update is provided as FBC.11 with further information on the progress with each of the sites referred to in the February 2021 position paper.

Nitrate mitigation

7.17 The issue of nitrate mitigation has constrained the ability of the Council to grant planning permission for new dwellings. However, this obstacle has now been resolved and the Council are currently issuing consents upon completion of appropriate legal agreements. Furthermore, it is clear that, moving forward, this issue should not arise again for the foreseeable future.

7.18 Nitrate mitigation problems date back to February 2019, when European case law led Natural England to issue advice to relevant local planning authorities recommending that an Appropriate Assessment be undertaken for schemes that result in a net increase of one new dwelling where there is a likely significant impact on European Protected Sites (EPS). The rationale for this premise is that overnight accommodation (to include dwellings) generates nitrates in wastewater that will be discharged into the Solent and thereby harm EPS's.

7.19 Residential applications are therefore required to demonstrate nitrate mitigation. This has proved to be difficult for some sites, not just within Fareham, but also in numerous adjoining and neighbouring local authorities. Agricultural uses also generate nitrates (through the

use, for example of nitrate fertilizer, or through the rearing of livestock) and thus the typical means of mitigation is through the removal of land from agricultural production. This can be carried out through the planting of woodland or creation of wetland habitats – the ‘rewilding’ of these agriculture sites create ‘mitigation sites’.

7.20 This solution is space hungry, and typical development sites are simply too small to be able provide adequate space to mitigate their nitrate loads. This has meant that for a period of time, the majority of applications in the system since February 2019 have been unable to demonstrate nitrate neutrality. Until this issue had been resolved such applications were left undetermined. As set out in paragraph 4.12 of the Housing Delivery Test Action Plan (**CDH.8**) at one point in 2020 some 1,400 dwellings could not be progressed pending resolution of this issue.

7.21 However, since September 2020 various mitigation sites have come forward to unlock application sites. The process is therefore one where applicants, during the application process, can make contact with a mitigation site operator. Credits are then purchased on the basis of an agreed nitrate load thereby requiring that the site operator will implement the terms of the overarching contract entered into with the Council – namely to remove relevant land from agricultural use and provide it as, for example, woodland or wetland habitats.

Mitigation Sites

7.22 There are currently three mitigation sites that applicants can access, as follows:

- Little Duxmore Farm, Rowlands Lane, Havenstreet, Isle of Wight
- Heaton’s Farm, Colemans Lane, Porchfield, Isle of Wight
- Warnford Park

7.23 Paragraph 5.10 of the Housing Delivery Test Action Plan identifies that agreements are in place with private operators to deliver 4,000

credits, which is sufficient for some 5,000 dwellings. Paragraph 5.12 states that there is an ongoing need to identify and secure future mitigation sites to help secure medium and long term housing supply.

7.24 All three mitigation sites are located in adjoining local authorities, which therefore means that residential schemes from other local authority areas, can purchase credits to mitigate their own nitrate load. In addition, it is understood that Little Duxmore Farm is at, or nearing, capacity and will soon be unable to make a significant contribution to nitrate mitigation.

7.25 Discussions have been held between the LPA and the agent acting for the Warnford Park mitigation site, who has confirmed the following:

- There are currently available some 3,000kgs of nitrates that can be used to mitigate residential schemes.
- The operators have entered into an overarching agreement with Fareham Borough Council in order to mitigate relevant residential schemes. However, no other meaningful discussions have been held with other, adjoining or neighbouring local authorities. Thus, at the present time only sites within the Borough can mitigate nitrate load at Warnford Park.

7.26 In addition, it has been confirmed by the Council that Heaton's Farm, Colemans Lane currently has some 486 kg of nitrates available for mitigation. However, it is understood that currently one other local authority, other than Fareham Borough Council, has access to this mitigation site.

7.27 Thus, it is clear that access to some 3,486 kg of nitrate mitigation at Warnford Park and Colemans Lane will be available to residential schemes within Fareham for the short to medium term thereby helping to secure a sufficient and sustainable level of local housing supply.

7.28 This is in addition to access that applicants may have to other sites that may come forward in the future.

- 7.29 The ability of individual sites to mitigate their nitrate load will vary. However, it is common for some sites to be able to demonstrate nitrate neutrality and therefore not be required to access the mitigation sites of Warnford Park or Colemans Lane. WGV, for example is to be nitrate neutral and is expected to deliver 390 dwellings over the next five years. This Appeal Site (plus the blue-edged land also under the control of the Appellant) is another example. These sites will not therefore be required to look for off-site nitrate mitigation.
- 7.30 The Habitats Regulations Assessment for the emerging Local Plan estimates (in para 6.6.16) (**CDF.7**) that the total nitrogen budget for the Plan is 2,182.62 kg/TN/year. This calculation, as set out in Appendix III of this document, is based on an assessment of the nitrate load of both allocated sites and windfall sites. The Appendix also sets out the assumptions made in this assessment and so will vary. However, identified mitigation sites should have sufficient capacity to cater for demands within the Borough for a considerable period of time and well beyond the next five years.

Nitrate Summary

- 7.31 It is clear that the Council has played a demonstrably positive and proactive role in securing nitrate mitigation. This has already had a significant and positive impact on the supply of housing this year enabling the Council to grant planning permission on sites that were otherwise unable to mitigate nitrate load before.
- 7.32 It is, therefore, clear that previous issues that the Council have had with regard to issuing consents have now been resolved and that a number of permissions have been granted thus enabling these sites to come forward. Furthermore, adequate nitrate mitigation can be provided for the foreseeable future ensuring that a sufficient level of housing supply can be maintained.

Projected Housing Land Supply within the context of the Emerging Local Plan

7.33 The Council has clearly made good progress in addressing ongoing housing land supply issues. Further work is still required and the Council acknowledge that it cannot yet demonstrate a five-year housing land supply position, but are confident that they will be able to do so in the near future in light of the emerging Local Plan and WGV progress.

7.34 The Council has published its Local Development Scheme (June 2021) (**CDF.6**), which sets out the timetable to adoption of the emerging Local Plan, as per the following:

- Consultation on revised publication local plan (Reg. 19) – Spring/Summer 2021
- Submission to the Secretary of State – Autumn 2021
- Examination – Winter/Spring 2021/2022
- Adoption – Autumn/Winter 2022

7.35 The Council submitted the Plan for independent examination on 30th September 2021 in accordance with this timetable. The Council is of the opinion that the remainder of the timetable for the adoption of the Emerging Local Plan is a realistic one. PINS maintain a list of recent local plans by reference to submission and adoption dates. Whilst a number of local plans submitted since 2019 have yet to be adopted there have been a number that have been adopted between 10 months and 1 year 9 months, as per the following table:

Review of timescales of recently adopted local plans (submission to adoption)

Local Council	Submitted	Adopted	Timescale
Chesterfield BC	28/06/2019	15/07/2020	1 yr 1 month
Durham CC	28/06/2019	21/10/2020	1 yr 4 months
Hackney	23/01/2019	22/07/2020	1 yr 6 months

London Legacy DC	08/03/2019	21/07/2020	1 yr 4 months
North York Moors NPA	02/07/2019	27/07/2020	1 yr
Northumberland NPA	30/09/2019	15/07/2020	10 months
Oxford CC (2016-36)	22/03/2019	08/06/2020	1 yr 3 months
South Kesteven DC	14/01/2019	30/01/2020	1 yr
South Oxfordshire DC	29/03/2019	10/12/2020	1 yr 9 months
Suffolk Coastal DC	29/03/2019	23/09/2020	1 yr 6 months
Average			1yr 3 months

7.36 In order to be considered sound, Local Plans should be deliverable as well as ambitious. There is also a requirement that the Local Plan should establish a five-year housing land supply upon adoption. In this regard and taking into account the requirement for a 20% buffer on five-year housing land supply, the specific figures of the stepped housing target proposed are necessary in order to both achieve a five year housing land supply on adoption of the Local Plan that is realistic and can be sustained going forward. It is important to note that the stepped housing requirement is not expressed as a maximum figure and therefore allows for more dwellings than the target to be delivered per annum. The total requirement and the stepped targets reflect what can be delivered as evidenced in the SHELAA. The trajectory has been informed by regular engagement with developers and landowners and is considered to be reasonable and realistic.

7.37 It is correct that this means the minimum housing need of 2,705 homes will be exceeded. However, the Local Plan is required to secure a 5YHLS on adoption and the unmet need contribution and 20% buffer need to be applied. Once you factor in these requirements, the total requirement would actually be 3,588, hence the proposal for the stepped requirement.

Evidence that Policy DSP40 is effective

- 7.38 As set out earlier in my evidence, the Council has an express policy permitting development in the countryside if DSP40 is satisfied and has used that policy to grant permissions when appropriate to do so. The very presence of the policy bolstered with the comments of the Inspector who found it sound, demonstrate that the Council is serious about addressing the situation. The Inspectors in the Appeal decisions referred to above appreciated that the Council was serious about addressing the shortfall and this policy was intended to do that – this is why it should be given full weight and any breach of it very significant weight.
- 7.39 Furthermore, through the Plan-making work, the Council has publicly identified potential sites as being appropriate for development, thus encouraging applications to be made. Significant progress has been made in granting permission for major housing sites compliant with policy DSP40 on land at Warsash, Titchfield and Funtley.
- 7.40 In Warsash planning permission has been granted for a total of 255 homes on land outside of the urban settlement boundaries included as a draft housing allocation in the publication local plan (housing allocation HA1 measuring 33.43 ha with an indicative yield of 824 dwellings). A further 431 houses are the subject of favourable resolutions to grant permission meaning once issued very shortly the Council will have permitted 686 homes due to the compliance of these proposed developments with policy DSP40 and in light of the Council's lack of a five year housing land supply. This is a significant contribution towards addressing the shortfall in housing supply brought about due to the efficacy of this policy which is designed for such a scenario.
- 7.41 At Titchfield on land to the east of Southampton Road, outline planning permission has been granted for up to 105 homes (reference P/18/0068/OA) following an assessment by Officers of compliance with policy DSP40 and a favourable resolution by the Council's

Planning Committee. Officers found no conflict with the constituent parts of policy DSP40, for example due to actual and significant harm to the character and appearance of the area. Reserved Matters approval has recently been granted for 95 dwellings (reference P/20/1584/RM). This site comprises part of a larger draft housing allocation in the publication local plan (HA3 measuring 7.6 ha) estimated to be able to accommodate up to 348 dwellings. It is another example of how development land identified in the publication local plan as a potential site for housing has been brought forward ahead of the plan process due to the permissive ability of policy DSP40.

7.42 In Funtley, two housing sites have been permitted providing a total of 82 homes (references P/17/1135/OA and P/18/0067/OA) in light of positive recommendations from Officers to the Planning Committee after careful consideration of policy DSP40.

7.43 The planning permissions granted or soon to be issued at these three 'clusters' alone will deliver a total of 873 dwellings within the countryside as a result of the application of policy DSP40.

7.44 At Down End Road, Portchester, during the recent public inquiry the single outstanding issue of safe highway design was resolved and the appeal was subsequently allowed for 350 dwellings. [**CDJ.18**]

Overall conclusion on 5-year housing land supply

7.45 For the reasons set out above, although the Council accepts that it is currently unable to demonstrate a 5-year housing land supply and that the shortfall is significant, I consider that the 3.57 year housing land supply figure relied upon by the Council is appropriate and that the housing land supply should continue to improve in the future through plan-led delivery.

Affordable Housing

Need

- 7.46 It is common ground that there is a significant unmet affordable need within the Borough (main SoCG paragraph 4.14). In this section I consider the extent of that need.
- 7.47 The Council's latest document setting out the need for affordable housing in the Borough is 'Fareham's Affordable Housing Strategy 2019-2036' (Core document **CDH.28**, page 11). It identifies a need for around 3,500 affordable homes in the Borough over the period 2019-2036, equivalent to 206 affordable homes per annum (to include an allowance of 500 for new households and those falling into need).
- 7.48 On this basis, the shortfall in the delivery of affordable housing between 2011/12- 2018-19 is as set out in the following table:

Period	Cumulative delivery (dpa) *	Shortfall (dwelling units)	
2011/12	206	127	-79
2012/13	412	218	-194
2013/14	618	276	-342
2014/15	824	413	-411
2015/16	1,030	440	-590
2016/17	1,236	525	-711
2017/18	1,442	566	-885
2018/19	1,648	610	-1,038

(* figures based on MHCLG live tables records)

- 7.49 For the eight-year period between 2011/12 - 2018/19 the overall affordable housing need was 1,648 dwellings (i.e. 8 x 206dpa). Over this period some 610 dwellings were delivered and thus there is a shortfall of 1,038 dwellings (based on MHCLG live tables).
- 7.50 There is no evidence that the shortfall in supply of affordable dwellings has resulted in an increase in affordable housing need within the Borough. The number of households on the Council's waiting list for social and affordable rented housing has not increased in the last few

years, but has remained generally constant at around 1,000-1,100 households as per the following table:

Year	No. on waiting list
June 2018	995
Aug 2019	1,100
Jan 2020	1,082
Jan 2021	1,125

- 7.51 Current indications from Help to Buy South are that the numbers registered for intermediate affordable homes have decreased significantly since 2018/19.

Future Affordable Housing Supply

- 7.52 The Council has appointed a dedicated post in 2018 to take a strategic lead on progressing affordable housing opportunities within the Borough. Since that date the Council has pushed forward with the delivery of new affordable housing. Typically, projects start on site within 12 months of a full planning consent and thus delivery is expected within five years.

- 7.53 Since the adoption of the Affordable Housing Strategy in 2019 the following affordable housing sites have either been completed or are anticipated to be progressed during 2021/22:

Site and proposal	Application no.	Consent date	Commentary
Former Merjen Engineering, Station Road, Portchester 16 no, Sheltered flats	P/19/0840/FP	17/04/2020	Contractors have been appointed and are due to shortly start on site
Former Hampshire Rose, 18 flats	P/17/0956/FP	25/05/2018	6 flats completed and occupied. Practical completion due May 2021
Land at Stubbington Lane, 11 houses	P/19/0915/FP	15/04/2020	Contractors have been appointed and are due to shortly start on site
123 Bridge Road, Sarisbury Green, 5 houses	P/15/0391/FP	26/05/2015	Completed
Former Scout Hut, Montefoire Drive, 9 flats	P/20/0702/FP	23/11/2020	Architects appointed to undertake the technical design stage and contractor expected to be appointed in 2021
28 Queens Road, Fareham, 2 dwellings	P/20/1513/D3	10/02/2021	Architects shortly to be appointed to undertake the technical design stage and contractor expected to be appointed in 2021

- 7.54 The projects outlined in the Table above alone comprise 61 affordable dwellings that are anticipated to be completed by the end of 2022.
- 7.55 It is also anticipated that, in future years, progress will be made with regard to the following sites as shown in the Table below:

Site	Commentary
Assheton Court Portchester - Redevelopment of 33 sheltered flats and redevelopment to provide c60 dwellings (net increase of c27 dwellings)	Detailed plans being prepared
15 Crossfell Walk, Fareham (P/21/0361/FP) - Demolition of 2 flats and redevelopment to provide 1 house	Application being considered
Menin House - Redevelopment of 24 dwellings to provide c30-50 dwellings	Awaiting Council Executive approval
Wynton Way. 10 dwellings	Local plan allocation delivery anticipated with five years.

- 7.56 The projects as outlined above are part of an ongoing programme seeking to deliver affordable housing within the Borough. The Council is working with Local Registered Providers who are able to boost the supply of affordable housing. Thus, some schemes are able to be provided as up to 100% affordable housing. Examples of where this is in the process of occurring are North Funtley (P/17/1135/OA), where consent has been granted for 27 dwellings, and land east of Southampton Road, (P/18/0068/OA) for 105 dwellings.
- 7.57 The Council acknowledges that at Welborne the minimum requirement is for 10% of the housing to be affordable up to the first 3000 units. Approximately 3960 units are likely to be completed within the plan period to 2037. As a best case at this stage, it is therefore likely that c.396 affordable dwellings will be provided over the plan period.
- 7.58 A viability review mechanism will be in place, starting from the delivery of 3,000 homes, with a view to enabling additional affordable housing on the site above the minimum 10% requirement subject to meeting certain pre-requirements. The developer has indicated that it remains its target to provide as close to 30% affordable housing as possible across the lifetime of the scheme.

7.59 Whilst affordable housing provision at Welborne is currently below that originally anticipated by the Council, this must be viewed against an improving position both in respect of a likely reduction in the number of households registered in housing need in the Borough (subject to the outcome of the review of affordable housing needs) and the more proactive role that the Council is now taking to progress affordable housing schemes within the Borough with successful outcomes.

8 HABITATS CONSIDERATIONS

Considerations Arising in the Putative Reasons for Refusal

- 8.1 As set out in section 6 above, permission cannot be granted unless the Inspector (as competent authority) is satisfied beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Sites. Putative reasons for refusal (e), (f) and (g) relate to impacts on European Sites in respect of recreational disturbance, impacts on the Brent Goose and Solent Waders network, and nutrients. It is common ground that mitigation is required in respect of each of these to avoid an adverse effect on integrity (Planning SoCG paragraph 3.15).
- 8.2 Each of these issues was addressed in paragraphs 8.22 to 8.29 of the report to committee.
- 8.3 The first of these effects addressed in the report is the loss of part of a Primary Support Area (F48B) for waders and brent geese, qualifying features of the EPS, as identified in the Solent Waders and Brent Goose Strategy (SWBGS) [**CDH.3**]. The Appellant has proposed an area of adjacent land to the east of the Appeal Site (part of the blue edged land) as a Bird Conservation Area (BCA). Outline proposals have been provided as to how the BCA would be set out, managed and maintained. It is also stated by the Appellant that the Hampshire & Isle of Wight Wildlife Trust (HIWWT) have agreed to take on the BCA and manage it in perpetuity. Natural England have raised no objection to the proposals in principle.
- 8.4 If planning permission is to be granted it would be necessary to secure the provision and future management of the BCA by way of a suitably worded set of obligations in a Section 106 legal agreement or unilateral undertaking. It is common ground that if a Section 106 properly secures provision and management of a suitable BCA, reason for refusal (f) would no longer apply (Planning SoCG paragraph 3.17). The Appellant has provided a new document bringing together the

proposals for the BCA in one place (Bird Conservation Area Proposals by Tetra Tech November 2021 – **CDAA.6**). The Council considers these revised and consolidated proposals to be satisfactory so as to be able to conclude that (so long as they are secured) there would be no adverse effect on the integrity of the EPS as a result of the loss of part of the Primary Support Area.

- 8.5 The second likely significant effect on EPS relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrate entering the Solent (because of increased amounts of wastewater from new dwellings) will have a likely significant effect upon the EPS.
- 8.6 Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites. Natural England have provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best available scientific evidence and research, however for each input there is a degree of uncertainty. Natural England advise local planning authorities to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.
- 8.7 The Appellant has submitted a nutrient budget for the development. Whilst that budget shows the development would result in a reduction in the amount of nitrogen reaching the water environment, the budget has been calculated for the Appeal Site plus the adjacent blue-edged land proposed to comprise the BCA. Taken by itself the development would not be nutrient neutral and so would rely on this adjacent land being taken out of its current use for grazing. With that in mind the Appellant has produced a new Nutrient Budget (FCPR) which is CDAA.5. The Council is satisfied that this document now demonstrates that, when taking into account the agricultural land to be changed to

a BCA as well as the appeal site itself, nutrient neutrality would be achieved.

8.8 Without a Section 106 legal agreement or unilateral undertaking being in place to secure this and to restrict the use of the mitigation land in the future, and for the lifetime of the development, the proposal fails to appropriately secure such mitigation to avoid any adverse effects on EPS. At the time of the Planning SoCG being produced along with my Proof being prepared, the unilateral undertaking is yet to be finalised. However, provided the unilateral undertaking appropriately secures nutrient neutrality, the Council is satisfied that the necessary mitigation of impacts on European Protected Sites ("EPS") will be provided and secured.

8.9 The third of these likely significant effects on EPS concerns recreational disturbance on the Solent coastline through an increase in population. Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution to the Solent Recreation Mitigation Strategy (SRMP). It is common ground that, if a contribution is secured in the unilateral undertaking to provide for the requisite payment towards the Solent Recreation Mitigation Strategy, putative reason for refusal (e) would be resolved (paragraph 3.16 of the Planning SoCG).

Post Decision Changes in the Position of Natural England concerning New Forest SPA/SAC/Ramsar

8.10 The Council first became aware of Natural England raising an issue in respect of the New Forest SPA/SAC/Ramsar in their response to the Regulation 19 Local Plan Consultation. This was raised in NE's representations dated 29 July 2021 (See **CDH.35**).

8.11 In respect of emerging new housing allocations and the Local Plan

HRA, Natural England state the following:

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

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

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

It is advised that your authority works in close collaboration with other affected local authorities within and surrounding the New Forest designated sites which share a commitment to develop a strategic, cross-boundary approach to habitat mitigation for the New Forest SPA/SAC/Ramsar. Natural England recommend such a strategy incorporates a package of measures including provision of suitable alternative green spaces and networks, and direct measures on the sites such as access management,

education and communication, wardening, and importantly, monitoring. Monitoring work (of visitor patterns and ecological features of the sites) will be important to further the evidence base on which mitigation strategies can be updated.

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

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

- 8.12 In terms of the strategic approach being adopted by the Council in order to address the Reg 19 objection, the Council has joined the New Forest Project Steering Group which is looking to develop more strategic scale mitigation for all authorities involved/impacted.

Zone of Influence

- 8.13 Plans and projects have the potential to impact on European sites beyond the confines of the individual sites themselves. Guidance on Ecological Impact Assessment (CIEEM, 2018) states that potential impacts should be investigated which occur within the zone of influence that arises during the whole lifespan of the proposed plan or project. The potential zone of influence is defined as:

- Areas outside a European site which could be used by individuals of a species qualifying as a primary ecological feature of that site and potentially associated with that site;
- Areas directly within the land take for the proposed development or plans;

- Areas which will be temporarily affected;
- Areas likely to be impacted by hydrological disruption; and
- Areas where there is a risk of pollution and disturbance (e.g. noise).

8.14 The Zone of Influence for this project was previously assessed as being up to 5.6 kilometres to take into account potential recreational impacts associated with the Solent SPAs. However, based on the most recent research provided by Footprint Ecology, and consultation responses provided by Natural England, the Zone of Influence specifically in relation to the New Forest SPA/SAC and Ramsar site has been determined as being 13.8 kilometres, taken as the crow flies (or 15km for large developments).

8.15 The Council have written to Natural England [**CDH.36**] to express their concern that the Borough was included within the zone of influence and NE's email reply of 26th October 2021 [**CDH.37**] makes clear that NE have taken a precautionary approach and therefore Fareham Borough, like others included in the ZOI, will be required to provide mitigation likely to be in the form of financial contributions to help reduce the expected impact of new residents on sensitive areas of the New Forest. This, at its simplest, could be a contribution towards wardening or a similar Strategic Access Management scheme such as applies to new development in proximity to the Thames Basin Heaths complex of sites. NE make it clear that they are not yet in a position to determine exactly what level of contribution will be applied to developments within Fareham Borough.

8.16 In the recent appeal on Land East of Crofton Cemetery, Stubbington the Inspector raised a number of questions on this issue. These were sent to the New Forest and their reply is attached at [**CDH.38**]. The New Forest NPA answers to the Inspector's questions 2, 3 and 4 are highly relevant so I have repeated them below:

2. How is the Natural England catchment distance arrived at? As the crow flies? Does it adequately take account of travel

distances? What does the survey data show about trips from Fareham?

NPA comment: Page 67 of the on-site [Footprint Ecology Visitor Survey Report](#) shows that the catchment area of 13.8 kilometres around the New Forest designated sites is the distance within which 75% of all short visits from home take place. This issue is explored in more detail in [Footprint Ecology's 'Zone of Influence' report](#) (2021) - Section 3 of which sets out the justification for the use of the 75% percentile for considering impacts, an approach adopted in strategic mitigation schemes elsewhere in the country.

The zone of influence (or catchment area) of 13.8 kilometres is determined in a straight-line distance (i.e. as the crow flies). Travel distances were considered by Footprint Ecology and Section 5 of the 'Zone of Influence' report confirms that the straight-line distance is the most appropriate method for calculating the potential visits and impacts to the New Forest.

The survey data shows that there were regular visits from Fareham residents to the New Forest and that the mean number of visits per annum for Fareham was 15.33.

3. Taking into account the evidence put by NE and the scale and location of development, what would the likely impact of the proposed development be?

NPA comment: New development in Fareham and within the 13.8 kilometre 'zone of influence' will contribute, in-combination with other day visitors arising from new development, to potential recreational impacts on the New Forest's designated sites (SAC, Spa and Ramsar). A summary of the potential recreational impacts on the designated sites can be found in Footprint Ecology's Report entitled ['Impacts of recreation and potential mitigation approaches'](#) (2020). The HRA of the proposed development submitted by the appellant calculates that the number of visits from the whole development to the New Forest would be approximately 7,580 per annum. Natural England confirm that impacts must be mitigated in-perpetuity. Therefore, taking 100 years as reflecting the in-perpetuity period (as assumed in the National Park Authority's own Habitat Mitigation Scheme), then the total visits that require mitigation would be $7,580 \times 100 = 758,000$ visits over the lifetime of the proposed development. This level of impact, when considered in-combination with other planned development in the zone of influence, means impacts cannot be ruled out. The HRA information submitted by the appellant is based on the Footprint Ecology research reports (2021) and appears to make a series of reasonable assumptions.

4. If there are impacts in combination, how can appropriate mitigation be arrived at? How is any sum arrived at? How will it

be spent? The UU is made out to Fareham BC, does Fareham have an appropriate scheme to direct funding to and would it provide adequate mitigation? Shouldn't any money, if required, go to the New Forest NP?

NPA comment: It is important to highlight that, at this point, there is no agreed mechanism or formula for deciding on a pro-rata approach for financial contributions towards the National Park Authority's own Habitat Mitigation Scheme (2020) from developments in neighbouring local planning authority areas. The Footprint Ecology 'zone of influence' report was published earlier this year and the project Steering Group (made up of the relevant local planning authorities, Natural England and Forestry England) are working through the next steps. Although there is not yet an established formula agreed across the zone of influence, the overall approach suggested by the appellant does not appear unreasonable.

The [National Park Authority's Habitat Mitigation Scheme \(2020\)](#) includes details on how the level of financial contribution was calculated and the costed package of mitigation measures that will be delivered. This package of mitigation measures is considered to be appropriate mitigation by Natural England and was found sound by the Inspectors examining the Authority's draft Local Plan and supporting evidence base in Summer 2019.

The proposed contribution from the appeal scheme in Fareham is based on a proportion of the standard contribution level of the Authority's adopted mitigation scheme. This is based on the frequency of visits to the New Forest designated sites from Fareham compared with those of new residents in the New Forest National Park. The contribution, therefore, reflects the fact that new residents in Fareham will visit the designated sites in the New Forest less often than new residents in the New Forest National Park. As an overall approach, there is some logic to this and it draws on the published research on visitor patterns.

The typical annual expenditure of the Authority's Habitat Mitigation Scheme is outlined in Section 11 of our SPD. Any new contribution will be spent on the measures outlined in similar proportions to those outlined in this Section. The Scheme also has the ability of reassess each measure and consider new measures to help deliver the mitigation needed in an effective manner over time. In addition, a number of the mitigation measures contained within the Authority's mitigation scheme have the scope to be 'scaled up' if required.

In terms of the mechanism for securing any financial contributions towards mitigation measures within the designated sites, we would highlight that the National Park Authority is not the planning authority for this application and is not the 'competent authority' under the Habitats Regulations for the appeal. There have been cases previously of neighbouring planning authorities transferring received financial contributions to the Authority to be spent on mitigation measures within the

New Forest’s designated sites. In these cases the relevant planning authority (and competent authority) secured the contributions and they were then transferred to the National Park Authority, ring-fenced for mitigation measures. We are content with this approach, which is consistent with the framework for the Bird Aware Solent mitigation scheme for example, whereby planning authorities negotiate and secure necessary contributions which are then transferred to be spent on agreed mitigation measures.

8.17 The Appellant in the Crofton Cemetery appeal submitted a UU on the basis of a financial contribution of £351.20 per residential unit. The justification for this figure was set out in a Shadow HRA and key paragraphs are set out below:

4.11 The average number of visits from Fareham Borough per year based on the telephone survey was 15.33 visits per annum. The proportion of visits from Fareham Borough per year based on the on-site visitors survey was 1% of all visitors. Therefore, it is proposed that an approach in terms of financial contributions would need to be proportionate to the relative number of visits in comparison with those from the New Forest National Park Authority.

4.12 The figure of 15.33 visits per annum from the telephone surveys or 1% of all visitors during the visitor survey is only approximately 7% and 5% respectively when compared to the number of existing visits generated by visitors from within the New Forest National Park (20% of all visits to the New Forest). It could be considered that a proportionate financial contribution would be between 7% and 5% of that of the New Forest Park Authority Habitat Mitigation Strategy. This information is summarised in Table 4.

Table 4: Relative Proportion of Visits

Survey Type	Fareham Borough (A)	New Forest National Park Authority (B)	Relative Percentage (B/A)
Telephone Survey	15.33 Visits Per Annum	211.3 Visit Per Annum	7%
Visitor Survey	1% Total Visits	20% Total Visits	5%

4.13 However, it is acknowledged that there are inherent limitations in the telephone survey and visitor survey as set out in the respective reports in the Footprint Ecology Study. Therefore, on a precautionary, but proportionate basis, it is proposed that securing a contribution of 10% of the value of the New Forest National Park Authority Scheme (or £351.20 per dwelling) would be appropriate when considering relative number of increases in visits likely as a result of this scheme. This would result in a total contribution of £72,347.20 for proposed development based on 206 dwellings.

- 8.18 Since the close of the Crofton Cemetery Inquiry the Inspector has written to NE by way of email dated 28 October 2021 seeking their views on a number of matters in order that she can make an Appropriate Assessment. This email is attached at **CDH.39** and gives NE a deadline of 11th November 2021 for a response. As soon as their response is known I will forward this to the Inspector and the Appellant.
- 8.19 The upshot of all of this is that, although not part of the Council's case, the Inspector is the competent authority and as a matter of law will either need to be satisfied beyond a reasonable scientific doubt, and having regard to NE's position, that there will not be likely significant effects (such that an appropriate assessment is not necessary), or will need to undertake an appropriate assessment to determine whether adverse impacts on the integrity of the New Forest SPA/SAC/Ramsar can be ruled out.
- 8.20 The Appellant has recently produced a 'shadow' HRA addendum (see CDAA.3) which at paragraph 2.16 screens out likely significant effects on the EPS within the New Forest from increased recreational pressure as a result of the appeal proposals.
- 8.21 If the Inspector, as Competent Authority for the purposes of this appeal, cannot conclude beyond a reasonable scientific doubt that there will not be any adverse impact on the integrity of the SPA/SAC the result would be:

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

9 THE LOCAL PLANNING AUTHORITY'S CASE

9.1 At the CMC the Inspector identified the main issues in this appeal are likely to be:

1. possible implications for local character and appearance (and including the scheme's relationship to the settlement boundary);
2. possible implications for the significance of local heritage assets;
3. development of agricultural land;
4. whether or not the scheme would make provision for appropriate mitigation in relation to:
 - the integrity of European Protected Sites;
 - affordable housing;
 - education;
 - open space;
 - public rights of way.

9.2 In respect of the evidence of the Council, landscape [issue 1] is dealt with by Ben Croot, whilst heritage [issue 2] is dealt with by Lucy Markham. I deal with agricultural land [issue 3] and mitigation [issue 4]. I set out each of these 4 main issues below, drawing on the evidence of Ben Croot and Lucy Markham in respect of the first two issues.

Issue 1 – Effect of the Scheme on the Character and Appearance of the Area

9.3 At paragraph 8.1.1 of Mr Croot's evidence, he makes clear that he has considered carefully the landscape and visual evidence submitted by the Appellant in relation to the Appeal Site. In coming to his conclusions on the Proposed Development, he states that he has also visited the Appeal Site and sought the opinion of colleagues at LDA Design who were involved at application stage, with the previous

appeal and with previous commissions in the Borough, including the Fareham Landscape Character Assessment (2017).

9.4 *'Landscape Sensitivity and the Magnitude of Change from the Proposed Development'* is considered by Ben Croot in Chapter 5 of his Proof and at 5.4.9 he sets out that on the basis of his analysis he is led to conclude that the Appellant has erroneously assessed a number of important components when undertaking the LVIA. These include:

- The underestimation of the value, susceptibility and sensitivity of the Appeal Site;
- The underestimation of the visibility of the Proposed Development and the number of visual receptors within the Meon Valley that would be affected;
- The underestimation of the magnitude of change for 'under construction' landscape and visual effects; and
- Subsequently, a failure to undertake a 'worst case' assessment as advocated by GLVIA 3.

9.5 The implications of these errors in terms of landscape and visual impacts are considered in Chapter 6 of the Proof of Ben Croot and at 6.1.2 he makes clear that a result of reducing the sensitivity of part of the Appeal Site is that impacts to landscape character of the Lower Meon Valley: Open Valley Side are understated in Table B4 of the Appellant's LVIA, which concludes effects of Moderate, Negative significance in the short term. In this regard it is appropriate to consider that the Appellant's LVIA states at Section 1.1 effects of 'Substantial' or 'Substantial/Medium' [i.e. 'Major' or Major/Moderate] *"can be considered to have additional weight in the planning balance"*. Ben Croot explains at paragraph 6.1.3 that the underestimation of impacts is further compounded by the Appellant's underestimation of the magnitude of change both landscape and visual receptors would experience as a result of the Proposed Development.

9.6 In Tables 1 and 2 at 6.1.4 Ben Croot summarises the differences in assessment outcomes between the Appellant's judgements and his own judgements. At 6.1.5 he makes clear that it is important to note the relationship between development size and resultant landscape

and visual impacts does not follow a linear negative correlation. For any development proposal there will be certain thresholds, dependent on a number of factors, where impacts will decrease in a series of stepped, potentially unequal, stages.

9.7 At 6.1.7 Ben Croot notes the importance of 'natural lines' is also recognised in the Landscape Institute's Technical Note regarding the assessment of valued landscapes which notes the role of the "*presence of natural lines in the landscape (e.g. natural ridgelines, woodland edges, river corridors, coastal edges)*" in contributing to the 'perceptual (scenic)' factors of a valued landscape. Given the Proposed Development's location on the valley side Ben Croot considers that it would 'skyline' and break the horizon, even with mitigation planting. Looking up from the valley floor or across from the eastern valley side, the prominence and awareness of new development breaking the horizon, extending built silhouette and intruding into undeveloped valued countryside would be more apparent in his view than development that was situated away from the sensitive Meon Valley sides and did not result in skylining. In this regard he continues at 6.1.9 that Posbrooke Lane, which follows the natural ridgeline running south from Bellfield currently has a rural character with open views over the Appeal Site to the Meon Valley. In his view, the Proposed Development would increase the sense of urbanisation and enclosure along Posbrooke Lane, extending the built form, which would be visible behind the proposed planting, 105.2m along the lane.

9.8 With regard to the efficacy of the planting proposed, which the Appellant relies heavily on for mitigation, Ben Croot deals with this in 6.1.10 to 6.1.15. On this issue he accepts, at 6.1.15, that the Proposed Development would result in some beneficial enhancement to the settlement edge as a result of proposed new planting. However, he considers that this benefit has been overestimated and does not outweigh the harm the Proposed Development would have to both the character and visual amenity of the Meon Valley. In his view, this harm would remain negative and "*can be considered to have additional weight in the planning balance*" for landscape and visual

receptors despite the mitigation proposed.

- 9.9 On the basis of the conclusions of Mr Croot that the Appeal Proposal fails to minimise impacts impact on the countryside and would cause permanent harm to landscape character and visual amenity and would harm a valued landscape, I consider those identified unacceptable landscape impacts of the development give rise to conflict with paragraph 174(a) and (b) of the NPPF, Policies CS14 and CS17 of the Core Strategy and Policies DSP6 and DSP40 of the LP2, as well as with policies DS1, DS3 and HP4(c) of the emerging Local Plan. I further consider that the elements of Policies CS17 and DSP40 that the development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.
- 9.10 Consequently, the Proposed Development conflicts with the objectives of Paragraph 174(a) and (b) of the NPPF and does not accord with the requirements of local plan policies CS14, CS17, DSP6 and DSP40(iii).

Issue 2 – Effect of the Scheme on the Setting of Heritage Assets

- 9.11 In Chapter 5 of her Proof, Lucy Markham refers to the previous appeal decision relating a larger scheme for up to 150 dwellings and in accordance with the principle of consistency set out in *North Wiltshire*³ [CDK.30] the findings of the Inspector in the First Appeal are relevant to the current Appeal and at 5.3 she summarises the points relevant to her evidence, as I have repeated below:

- 1) *Great Posbrook comprises a historic farmstead which includes a grade II* listed house and barn, which are in the top 8% of listed buildings in the country and a significant and invaluable resource (paragraph 32);*
- 2) *There is a functional relationship between the listed buildings and the adjoining land which was likely farmed as part of the farm holding and reasonable evidence that there is an*

³ *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C. R. 137 at 145

associative link with Titchfield Abbey, which adds to their significance (paragraph 36);

- 3) The more recent and modern infill development and recent housing within the farmstead and in the wider setting has had a negative impact on the listed buildings and detracts from their significance (paragraph 36);*
- 4) The Lower Meon Valley is a valued landscape (paragraph 28, on landscape);*
- 5) The wider setting of the site within a rural landscape assists in understanding the scale and status of the landholding, and sets the farmstead in an appropriate open rural agricultural setting and separates it from the settlement of Titchfield. This contributes to the significance of the heritage assets. (Paragraph 36);*
- 6) The southern urban edge of Titchfield is open and harsh with little by way of softening landscaping (paragraph 21, on landscape – Mr Croot considers that the edge is no longer harsh, as he explains in his evidence);*
- 7) The proximity to Titchfield and the exposed urban edge have a negative impact on the wider setting of the heritage assets, bringing the suburban development close to the farmstead and reducing the wider rural hinterland (paragraph 37);*
- 8) When viewed from the south, along Posbrook Lane and the public footpaths, the size and scale of the barn can be appreciated, and with the manorial farmhouse it is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible, there is a degree of separation (paragraph 42);*
- 9) The proposals would bring the settlement of Titchfield up to the cluster of buildings at the former farmstead and in effect subsume that once separate element into the broader extent of the development (paragraph 41);*
- 10) This would reduce the connection of the former farmstead and listed buildings to the rural hinterland and obscure the separation from Titchfield (paragraph 41);*
- 11) The change would be perceived when travelling along Posbrook Lane when entering or leaving the village, and would be readily appreciated from Bellfield and from the settlement edge, and from the public footpaths running through the land, in both static and kinetic views (paragraph 41);*
- 12) The change would be noticeable, harmful, significant and fundamental (paragraph 41);*
- 13) The proposed development would intrude into views from the south and in the short to medium term would be readily distinguishable as suburban housing (paragraph 42);*
- 14) In the longer term landscaping may reduce this negative effect; however, it would introduce a sense of enclosure around the farmstead and listed buildings, detach them from the rural*

hinterland and reduce the historic functional relationship with the adjoining open land;

- 15) The effect on views from footpaths to the east would be significant and harmful in the short to medium term. There may be some reduction in harm as the landscaping matures, but even with dense planting and the softening of the existing urban edge, it will be an undeniable fact that suburban development has been undertaken, and there is no separation between Titchfield and the historic farmstead (paragraph 43);*
- 16) The urbanisation of the remaining area separating the farmstead and listed buildings from the settlement is significant. Whilst the rural hinterland would remain to the south and west, the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development (paragraph 44);*
- 17) There would be less than substantial harm to the listed buildings; this would not be at the lower end as contended by the appellant, but more in line with that suggested by the Council (in the middle of the range) (paragraph 44);*
- 18) The proposals would therefore conflict with Policy DSP5 (paragraph 44); and*
- 19) The NPPF advises that great weight should be given to the conservation of designated heritage assets and any harm requires clear and convincing justification. The courts have held that any harm to a listed building or its setting is to be given considerable importance and weight (paragraph 45).*

9.12 In Chapter 7 Lucy Markham undertakes a detailed analysis of the historic development of Great Posbrook and at Chapter 8 she sets out the significance of Great Posbrook Farmstead, the barn and farmhouse.

9.13 At Chapter 9 Lucy Markham undertakes her heritage assessment and at 9.5 she helpfully sets out what she considers the points of contention to be. These, she states are:

- Whether the revised proposals retain a "clear and substantive gap" between Great Posbrook and Titchfield and whether the degree of separation would mean that the former farmstead would remain distinct from the settlement including views from the footpaths;*
- Whether the historic functional relationship between the listed buildings and the adjoining open land is maintained;*

- *Whether Historic England's and the Council's findings of harm to the listed buildings considered the beneficial effect of the softening the southern edge of Titchfield; and*
- *Whether the conclusion that the proposed development would not harm the locally listed farm buildings is inconsistent with the finding of harm to the listed buildings.*

9.14 In paragraphs 9.6 to 9.34 of her Proof she undertakes a 'setting assessment', dealing with the grade II* listed farmhouse and barn together as most of her observations on the setting effects are common to both buildings.

9.15 In 9.7 to 9.18 Lucy Markham considers the issue of the separation gap between Great Posbrook and Titchfield, noting that in their pre-application response Historic England identified that the planting of woodland in the gap between Great Posbrook and Titchfield would "erode the farmstead's open rural context and historic connection with this adjoining land". The extent of woodland was therefore reduced in the submitted scheme to 20m to the south of the proposed development and 10m to the north of Great Posbrook. While she does not consider the proposed woodland would detrimentally enclose the historic farmstead or listed buildings, it reduces the open land between the settlement and former farmstead to 26m. Mr Croot questions whether the full height planting along the northern boundary of the farmstead is achievable because of a sewer in this location; nevertheless even at a reduced height the vegetation would still reduce the extent of open land to a minimum of 26m. Therefore, on any measure, Lucy Markham considers the reduction in the separation distance to a minimum of 56m (including woodland) or 26m of open land between the woodland/vegetation bands is a relatively narrow gap. The Borough Urban Designer's independent assessment was that this was a "very minimal gap". It is not a "clear and substantive gap" as claimed by Mr Froneman. It is for these reasons that Lucy Markham concludes, on the first issue, at 9.15 that *"The proposed development would therefore obscure the separation between Titchfield and Great Posbrook as concluded in the First Appeal"*.

9.16 In 9.19 to 9.20 Lucy Markham considers the issue of whether the historic functional relationship between the listed buildings and the adjoining open land is maintained and concludes at 9.19 that *"It is common ground that the Appeal Site has a historic functional relationship with the former farmstead and the grade II* listed buildings. Constructing up to 57 houses on this agricultural land, changing its character from open to developed, from landscape to urban form, would therefore reduce the appreciation of this historic functional relationship and urbanise the setting of the listed buildings in the farmstead. This would harm the appreciation of the significance of the listed buildings."*

9.17 At 9.20 of her proof, Lucy Markham acknowledges that the landscape planting along the southern boundary of the proposed development would reduce the urbanising effect, by screening the proposed houses from view in the long term. However, she considers that one would still be aware of the new housing when travelling along the road and footpath beyond the woodland, and this, she states, "would urbanise the setting of the listed buildings". At 9.26 she makes clear that she has not identified any other positive heritage effects from the development, nor has the Appellant.

9.18 At 9.27 to 9.29 Lucy Markham comes to the following conclusions:

9.27 *This slight beneficial effect resulting from the landscape screening would be outweighed by the greater negative effect of the significant reduction in the 'gap' between Titchfield and Great Posbrook, which would bring development closer to the listed buildings, diminishing the appreciation of the historic functional relationship with the former farmland, reducing and urbanising its rural hinterland.*

9.28 *The diminution in the understanding that the barn and farmhouse were part of an historic farmstead would reduce the appreciation of the significant historic functional relationship with Titchfield Abbey. Great Posbrook was a monastic farmstead and if it becomes more difficult to understand that it was formerly a farm, the historic link with Titchfield Abbey would become more obscure. I do not place significant weight on this factor but it is material.*

9.29 *My conclusion is therefore that the proposed development would result in less than substantial harm to the grade II* listed buildings, at the lower end of the scale. The harm would be permanent and is of great weight in the planning balance. The weight increases because the effect is on highly graded assets.*

9.19 At 9.31 Lucy Markham makes clear that she does not consider her conclusions to be at odds with those of Historic England. She notes that Historic England have not objected to the application, nor do they support it. Their recommendation refers to the duty of the decision maker to have special regard to the desirability of preserving listed buildings (at section 66(1) of the Planning (LBCA) Act 1990) and to determine applications in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the PCPA 2004). Essentially, she states, HE have concluded that there is less than substantial harm, and are leaving it to the Council to assess whether the public benefits outweigh this harm. They do not form a judgement on the planning balance themselves.

9.20 Finally, at 9.32 to 9.34 she addresses the contention by Mr Froneham claim that her finding of harm to the listed buildings is inconsistent with her conclusion that the proposed development would not harm the locally listed former farm buildings. She makes clear that she disagrees.

9.21 For the reasons set out in the detailed evidence of Lucy Markham, the appeal proposals will harm the significance of the grade II* listed Barn and Farmhouse, with the harm being at the lower end of the less than substantial scale. She notes at 9.36 that Historic England, the Council's Urban Designer, the Fareham Society and the Titchfield Village Trust and her all agree that the proposals would cause less than substantial harm.

9.22 At 9.38 Lucy Markham notes that the NPPF (para 199) and case law on the section 66 duty (Barnwell) are clear that harm to highly graded assets has more weight in the planning balance and increases the strength of the statutory presumption. In this case the assets are

highly graded listed buildings (II* - of only 20 in the Borough). She therefore considers [9.39] that the overall heritage harm that she has identified should be accorded great weight.

9.23 One of the issues considered in the High Court decision *R (on the application of The Forge Field Society and others) v Sevenoaks District Council* [2014] EWHC 1895 (Admin) or 'Forge Field' was that of alternative sites [**CDK.21**].

9.24 Mr Justice Lindblom held as follows at paragraph 61:

"If there is a need for development of the kind proposed, which in this case there was, but the development would cause harm to heritage assets, which in this case it would, the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption in favour of preservation. Indeed, the presumption itself implies the need for a suitably rigorous assessment of potential alternatives."

9.25 The law on alternatives in the heritage context was also considered recently in *R (Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport* [2021] EWHC 2161 (Admin) [**CDK.29**]. At paragraphs 268 to 275 Mr Justice Holgate considered the relevant case law on when an alternative (whether a concrete alternative or a mere possibility) may permissibly be taken into account by a decision taker and when (going further) an alternative is an "obviously material consideration" which must be taken into account.

9.26 This is a case involving harm to Grade II* assets, which are high grade assets of which there are only 20 in the Borough (and only 4 at Grade I) and also involving harm to a valued landscape (again a rarity in the Borough) and it is therefore appropriate to consider alternatives, namely housing proposals elsewhere in the Borough that would not cause such harms. There is no reason why an ordinary housing proposal such as the appeal proposal could not come forward on an alternative site not involving such harms. I therefore consider that the harm has not been clearly and convincingly justified for the purposes of paragraph 200 of the NPPF.

9.27 In any event, I consider that the public benefits of the appeal proposal, as set out in the Planning Balance section of my proof, do not outweigh the less than substantial harm that will arise to heritage assets. Accordingly, the balance under paragraph 202 of the NPPF falls against the Appeal Proposal whether or not alternatives are considered.

9.28 Consequently, the proposals conflict with the objectives of Paragraph 202 of the NPPF and do not accord with the requirements of local plan policies CS17, DSP5 and DSP40(v) or Policies HE1 and HE3 or the emerging Local Plan.

Issue 3 – Loss of BMVAL

9.29 The site overlies an area of Grade 3a (good quality) agricultural land, this being categorised as Best and Most Versatile agricultural land (BMV), and currently hosts and provides for farming activity. The Core Strategy recognises this important and finite resource which has helped shape the character of the Borough's landscape. As well as being essential for agriculture, this resource – which would be sterilised if the Appeal Development were to go ahead – plays an important role in supporting biodiversity habitats.

9.30 As set out at 4.13 of the Planning SoCG, the Appeal Scheme would result in the loss of 12.5ha of BMV agricultural land (through the loss through development and the land being taken out of agriculture for habitats mitigation). It is common ground that this loss alone (i.e. if there were no other harms) would not be sufficient to warrant the refusal of planning permission but it does remain a matter of limited weight as a harm in the overall planning balance (Planning SoCG paragraph 4.13).

9.31 However, as made clear on page 65 of the NPPF it is only Grade 3a which is BMV agricultural land. Based upon the appellant's Agricultural Land Considerations (June 2020) it would appear that some 7.9ha [64%] of the overall land area is Grade 3a and thus BMV.

- 9.32 I consider the loss of an area of a total of 7.9ha of Grade 3a BMV agricultural land under the Appeal Development to be of limited, but certainly not insignificant, harm. I accept that development of other sites for housing might also involve loss of BMV agricultural land, given the high prevalence of such land in the Borough. However, this does not decrease the harm from the loss of such land (just as the fact that housing could be developed on other sites does not decrease the benefit of housing from this Proposal). A proper planning balance must factor in the full extent of the harms and the full extent of the benefits.
- 9.33 The loss of BMV agricultural land is, in my view, in breach of LPP1 Policy CS16, LPP2 Policy DSP40(v) and paragraph 170(b) of the NPPF. As set out above, I consider that full weight can be afforded to Policy DSP40 and significant weight to Policy CS16. Policies DS1(m) and HP4(e) of the emerging Local Plan would also be breached.
- 9.34 The Appellant's position (see paragraph 4.13 of the Planning SoCG) is that the loss of BMV land would not represent an "unacceptable" environmental implication in the terms of Policy DSP40(v). I disagree. I note that, at paragraph 68 of his decision on the previous Appeal on this site, Inspector Stone treated the loss of BMV land as a breach of policy DSP40 (**CDJ.2**).
- 9.35 Inspector Jones in his decision in Land at East of Newgate Lane found at paragraph 34 that loss of BMV land in that case would not be an unacceptable environmental implication. However, that was 76% of a 4.1ha site, so at 3.116ha was a smaller area at just 40% of that which would be lost if this appeal were to be allowed.
- 9.36 Overall, I consider the loss of BMV land is a breach of CS16 of the LPP1 and DSP40(v) of the LPP2, and also DS1(m) and HP4 of the emerging Local Plan. I give limited weight to the loss of BMV agricultural land on the basis of the amount of land affected and the fact that it is Grade 3a. However, it does put the proposal in breach of the development plan and remains a negative in the planning balance.

Issue 4 – Mitigation

The Integrity of European Sites

- 9.37 I have addressed this issue in section 8 above.

Affordable Housing

- 9.38 As set out in the Planning SoCG, the Scheme provides for a total of up to 57 dwellings, including the provision of up to 22 affordable dwellings on site (and an off-site financial contribution equivalent to the provision of 0.8 dwellings, thus achieving a full policy-compliant 40% affordable housing provision). The size and tenure mix of the affordable housing units is to be secured through the unilateral undertaking and includes up to 15 social/affordable dwellings for rent and up to 7 intermediate/shared ownership dwellings.

Education

- 9.39 The requirement for a financial contribution towards education provision will be secured through the unilateral undertaking in agreement with the requirements of Hampshire County Council as the education authority. As set out at paragraph 8.3v of the Planning SoCG the contribution would be the sum of £121,915 towards additional infrastructure at Titchfield Primary School.

Open Space

- 9.40 As set out in paragraph 8.62 of the Committee Report, the determined illustrative site plan does not include any provision for public open space on the appeal site, but there was however an indication that land within the appellant's control to the south of the site would be provided as public open space although no further details were available. Paragraph 8.62 went on to state that in respect of play provision and in accordance with the Council's adopted Planning Obligation SPD, the proposed number of units would require the provision of a Locally Equipped Area of Play (LEAP) which, along with

the public open space overall, could be secured via a legal agreement. As set out at 3.6 of the Planning SoCG, an updated Illustrative Plan (No. 16.092A) has been prepared to show the indicative location of an on-site LEAP. Delivery of the LEAP at the reserved matters stage will be secured through the obligations secured in the UU, along with the sum of £70,000 towards provision of the LEAP by the Borough Council as well as a maintenance sum of £38,000. As set out in paragraph 8.2 of the Planning SoCG, the Appellant is not currently proposing POS, but considers that it could be provided to the south of the proposed dwellings if the Inspector considers it to be necessary.

9.41 As set out earlier, refusal reason h) reads:

In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;

9.42 In the email from Steven Brown of Woolf Bond Planning dated 18th October 2021 [**FBC.12**] it is clear that it is their position that there is no shortfall in open space within Titchfield ward and therefore any provision of a LEAP will be a benefit and no public open space is required.

9.43 The starting point on this matter is adopted LPP1 Policy CS21 (see 5.13 above). In his email Mr Brown correctly identifies the right part of the policy and that POS provision is dependent on existing provision being insufficient. Policy CS21 reads (Brown's emphasis added):

Policy CS21 Protection and Provision of Open Space

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.

For further information please contact planningpolicy@fareham.gov.uk

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Strategy DPD

Adopted August 2011

Proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided as follows:

- Parks and Amenity Open Space 1.5 ha / 1,000 population
- Outdoor Sport – 1.2 ha / 1,000 population
- Children's Play Equipment – 14 pieces of equipment per 1,000 1-12 year olds
- Youth Facilities – 1 youth facility/MUGA per settlement area

In addition to these types of open spaces, where existing provision is insufficient to provide for the additional population, the Borough Council will seek the provision of accessible greenspace which meets the standards set out in the South East Green Infrastructure Framework including Accessible Natural Green Space standards.

9.44 Mr Brown suggests that the wording is inconsistent with the adopted Planning Obligations Supplementary Planning Document (SPD) (excluding Welborne) [**CDE.5**] which at page 31 (para C.8) states:

C.8 For sites yielding between 20 and 49 dwellings the Council will normally only seek to secure the provision of on-site parks and amenity open space where the proposed development will exacerbate, or create, a deficit in provision. The determination will be based upon the contents of the latest available survey of open space in the Borough, which is currently the Fareham Greenspace Addendum 2014.⁷ However, on sites of 50 or more dwellings on-site parks and amenity open space will normally be expected to be delivered on-site, regardless of local provision in order to serve new residents' needs as locally as possible.

9.45 Paragraph C.12 uses similar wording to require children's play areas on sites over 50 dwellings "regardless of local provision in order to serve new resident's needs as locally as possible".

9.46 The emerging local plan Policy NE10 (Protection and Provision of Open Space) (see p264 – 267) reads differently to the adopted policy

and doesn't allow for a reduction in or exemption from making on-site provision:

Policy NE10: Protection and Provision of Open Space

Development on open space will be permitted provided:

- The open space, or the relevant part, is clearly shown to be surplus to local requirements and will not be needed in the long-term; or
- The loss of open space is to be replaced by at least equivalent or better in terms of quantity, quality and accessibility and there will be no overall negative impact on the provision of open space; or
- The development is for alternative sports and recreational provision, which meets locally identified needs and clearly outweighs the loss of the current or former use.

Residential development will be required to provide open and play space to meet the needs of new residents. Where possible, development shall address any additional identified deficiencies in open space highlighted within the most recent Open Space study.

9.47 Clearly this is a material consideration to be given appropriate weight.

9.48 The most recent update of open space across the Borough is the Open Space Study 2018 [**CDE.7**]. Para 3.5 onwards explains how the assessment of current open space provision has been approached in terms of standards for Natural Green Space and Parks and Amenity Open Space and Play/Youth Equipment. At para 3.6 it says "There may be areas of the Borough that benefit from levels of provision exceeding these minimum standards, however the Council takes the position that this does not mean there is any surplus to requirements". It should be noted that Policy CS21 doesn't talk about deficit/surplus but instead about sufficiency.

9.49 The appeal site is in Titchfield ward. The table at para 4.3 (Table 3) identifies a deficit in Parks and Amenity Open Space of -1.97 ha for Titchfield ward in the 2014 Greenspace study. Table 4 shows a deficit in Natural Greenspace of -12.41 ha in that same study.

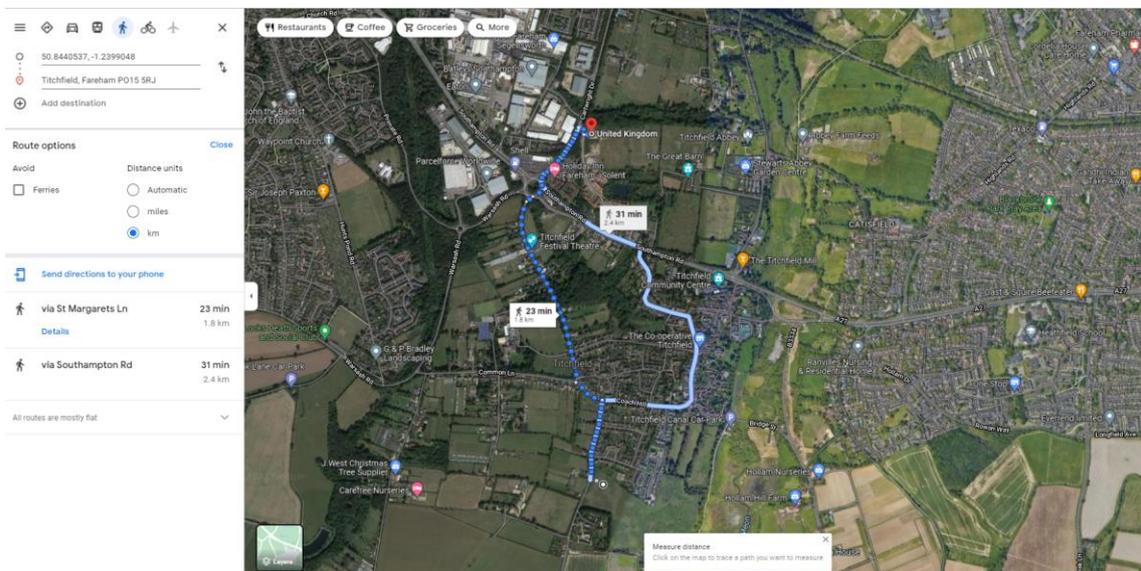
9.50 Moving on to 2018, the table at para 5.2 (Table 8) now shows a huge sufficiency in Natural Greenspace of 110.05 ha and a slightly smaller deficit than 2014 in Parks and Amenity Open Space of -1.40 ha.

9.51 The difference in the 2014 & 2018 baselines is set out in Section 5

(note the numbering goes awry half way through from 5.11 – 7.11) with Tables 11 & 12 showing the differences in the baseline positions for Natural Greenspace and Parks and Amenity land.

9.52 The reason for the huge jump in NG in Titchfield ward is given at paras 5.6 & 5.11 and quite simply it is down to the 2018 study classifying the land in and around Titchfield Haven Nature Reserve (NNR) as “limited access” land. It was previously excluded from the 2014 study on the basis that there are restrictions and fees⁴ to enter the Nature Reserve, however it was decided to include it in the 2018 Study as having limited access because of the PROW network that crosses part of the haven and runs alongside the canal.

9.53 Regardless of the sufficiency in NG, there is still a deficit in Parks and Amenity space of -1.40ha. However, paras 7.11 & 7.17 mention this situation improving in the future as a result of Titchfield Meadows country park being created. The country park was not open in 2018 but is now called Abbey Meadows. However, the country park is on the north side of Titchfield a fair distance away - see Google Maps screenshot below.



9.54 Lastly, the Open Space study has a useful reference to Bellfield play area (directly adjacent to the appeal site) at para 7.16 which reads:

“Existing Parks and Amenity Open Space that scored poorly

⁴ <https://www.hants.gov.uk/thingstodo/counyparks/titchfield>

in the Fareham Borough Greenspace Study 2007 were reviewed again in this study in 2017 to reassess their quality. The results of their scoring can be found in the appendix to this study. Below are suggestions of how to improve the Parks and Amenity Open Space that were reviewed. These are only suggestions and would need to be considered in consultation with the Parks and Open Spaces Manager at the Council and with Local Residents to ensure improvements are appropriate and justified.

.....

Bellfield- Site is located at the back of housing and garages. Site appears to be well used and could benefit from a makeover (landscaping and planting) to breathe new life into the area. Football goal mouth was at the time very worn, the grass here should be reseeded.

.....”

- 9.55 On this basis, I consider that POS is required to comply with Policy CS21. Whilst large areas of NG are nearby, there is a poor quality, small existing area of park/amenity land nearby and an overall deficit of -1.40ha for Parks and Amenity Open Space (the type required to be provided by the Appeal development). The creation of Abbey Meadows is unlikely to address that deficit for new residents at the appeal site given how far it is away.
- 9.56 Moreover, other material considerations also support a requirement for POS, namely a) the requirements of the adopted SPD; b) the requirements of the NPPF; and c) the requirements of emerging policy NE10 for new development to provide public open space regardless.
- 9.57 For those reasons, I consider POS to be required. However, as set out in the Proofs of Lucy Markham and Ben Croot, the provision of POS on the land to the south of the dwellings raises heritage and landscape concerns.

Public Rights of Way

- 9.58 The proposal would result in the loss of a public footpath and partial diversion of another, both of which cross the appeal site. As with the effect of the previous appeal scheme on these footpaths, the adverse effects on the public rights of way network could be addressed

through suitable alternative or diverted routes being proposed and a financial contribution towards improvements to the wider network in the local area being provided by the appellant. These mitigation measures would be secured through the Unilateral Undertaking which provides for the sum of £183,500 to be used for resurfacing and associated works to 1.5km of Footpaths 48 and 51.

10 PLANNING BALANCE, SUMMARY AND CONCLUSIONS

10.1 As I have set out at 6.1, the Inspector is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to conduct an appropriate assessment of all likely significant effects (i.e. those effects that cannot be excluded beyond a reasonable scientific doubt). The requirements are summarised in **R (Mynydd y Gwynt Ltd) v Business Secretary** [2018] P.T.S.R. 1274 (**CDK.9**) and **R (An Taisce) v SSECC** [2015] Env. L.R. 2 (**CDK.14**). For the appropriate assessment to be “passed” the Inspector must be certain beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Site in perpetuity. If the Inspector is not certain beyond a reasonable scientific doubt that the Appeal scheme will not (alone or in combination with other plans or projects) adversely affect the integrity of a European Site, permission has to be refused unless the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the Appellant does not suggest. A planning balance therefore only needs to be conducted if the Inspector is able to exclude any adverse effects on integrity beyond a reasonable scientific doubt.

10.2 In this regard my planning balance proceeds on the assumption that all habitat issues have been resolved and also that affordable housing, education and public rights of way contributions have been secured through the unilateral undertaking.

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

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

10.4 The Council is currently unable to demonstrate a five-year supply of

deliverable housing sites, so under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeal are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application (or appeal) are out of date, this means granting planning permission unless: the application of policies in the Framework that protect areas or 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 of the Framework taken as a whole. This approach is reflected in LP2 Policy DSP1.

- 10.5 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, though it does not displace the statutory priority of the development plan. That said, the tilted balance will only apply if footnote 7 is not triggered in respect of habitats or heritage assets.

Benefits of the Scheme

- 10.6 In Chapter 6 of the Appellant's Statement of Case a number of benefits are identified under the headings 'Economic', 'Social' and 'Environmental'.
- 10.7 In terms of economic benefits, I acknowledge that the appeal scheme would be likely to provide employment opportunities and economic benefits to the area in terms of job creation and increased local spending. I attach moderate weight to these factors.
- 10.8 In respect of social benefits, the proposals would provide a mix of housing types and styles. They would make meaningful, albeit limited, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. In these respects, the proposals would be consistent with the

Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. Taken together, I give those benefits substantial weight.

10.9 It is likely that there will be a net gain in biodiversity and landscaping and nitrate mitigation but these are a balance and required in the context of also providing a degree of mitigation. I therefore attach limited weight to these factors.

10.10 Overall, I consider that the benefits are significant, though they are obviously much reduced in comparison with the previous scheme.

Harms of the Scheme

10.11 As set out in section 8 of his Proof, Ben Croot is of the opinion that the Appellant has:

- Overestimated the influence of the existing settlement edge in relation to "*the northern end*" of the Appeal Site;
- Incorrectly reduced the landscape value of "*the northern end*" of the Appeal Site on the basis of this perceived influence;
- Incorrectly reduced the sensitivity of "*the northern end*" part of the Appeal Site on which built form is proposed;
- Underestimated the visibility of the Proposed Development and the number of visual receptors that would be affected resulting in an incorrectly reduced magnitude of change assessed to landscape and visual receptors;
- Failed to assess a 'worst case' assessment scenario as advocated by GLVIA3 and consequently underestimated the harm to the landscape and visual resource as a result of the Proposed Development.

As a result, he considers that the appellant has understated the landscape and visual impacts of the Proposed Development, which he considers would cause permanent harm to landscape character and visual amenity and would harm a valued landscape, and which would

fail to minimise the impacts of the Proposed Development on the Countryside.

10.12 Ben Croot acknowledges that the Council does not currently have a 5 year housing land supply and therefore Policy DSP40 is engaged. Whilst the subsection iii) of Policy DSP40 requires proposals to "*to minimise any adverse impact on the Countryside*", given the evidence he sets out within his Proof he believes the level of temporary and permanent harm to the landscape character and visual amenity of a valued landscape as a result of the Proposed Development is unacceptable in landscape and visual terms and consequently policy requirements are not satisfied. Although he accepts that policy DSP40 contemplates that there may be some adverse landscape and visual impacts from proposals on the countryside, he considers that the impacts in this case have not been minimised to acceptable levels, in breach of the policy. There would therefore be conflict with paragraph 174(a) and (b) of the NPPF, Policies CS14 and CS17 of the Core Strategy and Policies DSP6 and DSP40 of the LP2, as well as with policies DS1, DS3 and HP4(c) of the emerging Local Plan.

10.13 The evidence of Lucy Markham considers that there would be harm to the significance of two Grade II* designated heritage assets in the area. She concludes that the level of harm would be less than substantial and at the lower end of that spectrum. However, as she notes (paragraph 4.7) less than substantial harm does not equal a less than substantial objection to the grant of planning permission.

10.14 Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II* and therefore are assets of the highest significance, of which the Borough only has a very limited number. As Lucy Markham notes (paragraph 9.38), the statutory strong presumption against granting permission for development that would harm the significance of listed buildings operates more strongly for highly graded assets, and this is also reflected in the NPPF. As Lucy Markham concludes (paragraph 9.39)

great weight should be accorded to the overall heritage harm that she has identified.

- 10.15 Following the judgements in **Forge Field** and **Stonehenge**, as set out earlier, and given that this is a case involving harm to Grade II* assets, which are high grade assets of which there are only 20 in the Borough (and only 4 at Grade I) and also involving harm to a valued landscape (again a rarity in the Borough) I consider it is appropriate to consider alternatives, namely housing proposals elsewhere in the Borough that would not cause such harms.
- 10.16 In this case I consider that there clearly will be other sites within the Borough which comply with the requirements of DSP40 and avoid any adverse impact on heritage assets, particularly those high grade assets of which there are only a limited number of in the Borough. I therefore consider that the harm has not been clearly and convincingly justified for the purposes of paragraph 200 of the NPPF.
- 10.17 In any event, I consider that the public benefits of the appeal proposal, as set out in this section of my proof, do not outweigh the less than substantial harm that will arise to heritage assets. Accordingly, the balance under paragraph 202 of the NPPF falls against the Appeal Proposal whether or not alternatives are considered. The proposal also does not accord with the requirements of local plan policies CS17, DSP5 and DSP40(v) and emerging local plan policies HE1 and HE3.
- 10.18 The appeal proposal will lead to the loss of 7.9ha of Grade 3a BMV agricultural land, in breach of policies CS16 and DSP40(v) (and emerging policies DS1(m) and HP4), a matter to which I ascribe limited (but certainly not insignificant) weight on the basis of the amount of land and the fact that it is Grade 3(a).
- 10.19 The appellant is currently proposing to provide a LEAP through the unilateral undertaking, but no POS, which I consider to be in breach of policy CS21, the Planning Obligations SPD, the NPPF and emerging policy NE10.

- 10.20 In respect of local policies relevant to the main issues, I consider that the appeal scheme fails to comply with the requirements of the following Development Plan policies: CS14, CS16, CS17, CS21, DSP5, DSP6 and DSP40. These reasons for this conclusion are set out below.
- 10.21 Policy CS14 (Development Outside of Development Boundaries) which seeks to protect the countryside, outside development boundaries, from development which would adversely affect its landscape character, appearance and function. It is common ground between the parties, the Lower Meon Valley, within which the appeal site lies, is a valued landscape. In the assessment of Mr Croot, there will be significant adverse effect on the adjoining countryside through the development of this site. Moreover, the proposed landscaping will fail to minimise the adverse effects.
- 10.22 Policy CS16 (Natural Resources and Climate Change) which seeks to prevent, inter alia, the loss of BMV agricultural land.
- 10.23 Policy CS17 (High Quality Design) which requires that all development, buildings and spaces will be of a high quality and proposals will need to demonstrate, inter alia, that they have responded positively to key characteristics of the area. As set out in the evidence of Mr Croot, he considers that the scheme proposals fails to respond to the key characteristics of the area.
- 10.24 Policy CS21 (Protection and Provision of Open Space) which sets requirements for public open space.
- 10.25 Policy DSP5 (Protecting and Enhancing the Historic Environment). It is the expert evidence of Lucy Markham that there would be less than substantial harm to two Grade II* listed buildings. The proposal would have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an

important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant, albeit at the lower end of the less than substantial scale, and the harm would not in my view be outweighed by the public benefits. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.

- 10.26 The Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to the statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my conclusions on the planning balance below, which includes the Framework's 202 balance, which I consider falls against the proposal. For these reasons the scheme fails to accord with policy DSP5.
- 10.27 Policy DSP6 (New Residential Development Outside of the Defined Urban Settlement Boundaries), which, in seeking the protection of the character, appearance and function of the landscape, requires that there will be a presumption against new residential development outside of the defined urban settlement boundaries. For the same reasons given in respect of Policy CS14, in respect of adverse impact to a valued landscape, the scheme fails to accord with this policy too.
- 10.28 Finally, Policy DSP40 (Housing Allocations), sets out that where (as here) it can be demonstrated that the Council does not have a five year housing land supply, additional housing sites may be permitted outside the urban area boundary, where (among other things) they (iii) minimise any adverse impact on the countryside; and (v) avoid any unacceptable environmental harm such as harm to heritage assets and loss of BMV Land. For the same reasons given in respect

of Policies CS14, CS16, CS17, DSP5 and DSP6 the scheme fails to accord with this policy too.

10.29 Therefore, to summarise the conflict with planning policy, I consider those adverse effects of the development give rise to conflict with Policies CS14, CS16 and CS17 of the Core Strategy and Policies DSP5, DSP6 and DSP40 of the LP2 and therefore with the Development Plan as a whole. There would also be conflict with paragraphs 174 and 202 of the Framework and policies DS1, DS3, HP4, HE1, HE3, and NE10 of the emerging Local Plan.

10.30 I consider that the elements of those local plan 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. I therefore consider that the greatest weight should be attached to the conflict with the development plan that I have identified. This follows the approach adopted by Inspectors in the various appeals that I have referred to.

Conclusions on the Planning Balance

10.31 Before I commence both a 'standard' and 'tilted balance' assessment of the appeal scheme I consider it appropriate at this stage to confirm that I accept that this current appeal scheme is less damaging than that which was dismissed on appeal in 2019. However, I do not consider that the harms have been overcome and the benefits have also reduced as a result of the number of houses falling by nearly two thirds.

10.32 I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the scale of development these would amount to small figures and I have ascribed

this limited weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

10.33 I conclude that the less than substantial harm I have identified to heritage assets, and to which I give considerable importance and weight, is not outweighed by the benefits of the scheme that I have identified. On this basis I conclude that there is a “clear reason for refusing the development proposed” under paragraph 11.d.i of the NPPF. As the scheme fails the paragraph 202 test this would disengage the paragraph 11d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.

10.34 The proposal therefore is to be considered in the context of a straight balance, albeit that the NPPF heritage policy provides a clear reason for refusing the proposal. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II* listed buildings and a limited adverse effect on best and most versatile agricultural land in the area, plus (currently) harm from a lack of POS provision. On this basis the proposal would conflict with policies CS14, CS16 and CS17 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2 and with the development plan as a whole (as well as emerging local plan policies). The fact that the proposal is in breach of the development plan is important, given the statutory priority afforded to it (see the **Suffolk Coastal** and **Gladman** cases addressed in paragraph 6.4 above).

10.35 If the Inspector were to disagree with me on the heritage impact and that the scheme does not fail the paragraph 202 test, then it is clear that the ‘tilted balance’ test will apply. In this regard I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of

two Grade II* listed buildings⁵ and a limited adverse effect on best and most versatile agricultural land in the area, plus (currently) harm from a lack of POS provision. On this basis I remain of the view that the proposal would conflict with policies CS14, CS16 and CS17 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2 (as well as emerging local plan policies). Undertaking this approach, I consider that the identified harm would still significantly and demonstrably outweigh the benefits arising from the development.

10.36 I therefore conclude that the appeal should be dismissed.

⁵ Which since the paragraph 202 test could not have been failed to get to this stage must be of more limited weight and capable of being overridden by the overall public benefits of the scheme, but still be a matter against the grant of permission when considering the planning balance (otherwise the planning balance would be distorted by factoring in benefits and ignoring harms).