IN THE MATTER OF

THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF

LAND EAST OF POSBROOK LANE,

TICHFIELD, FAREHAM.

OPENING SUBMISSIONS

ON BEHALF OF

THE APPELLANTS

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1. These Opening Submissions are made on behalf of the Appellants in respect of a non-determination appeal concerning an application for up to 57 dwellings, parking and landscaping ('the scheme', or 'appeal scheme') on land east of Posbrook Lane, Tichfield ('the site'). The site lies outside but immediately adjacent to the out of date adopted settlement boundary of Tichfield in what is recognised to be as sustainably located position in relation to the sustainable settlement of Tichfield. The Council acknowledges that it cannot demonstrate the required 5 year housing land supply and that this situation will not be resolved without development of land outside adopted settlement boundaries and allocations.

2. The appeal scheme comes forward in the context of the refusal on appeal of a larger scheme on land east of Posbrook Lane ('the previous scheme'). The Appellants have reflected on the reasons given for that refusal by the inspector on appeal and devised proposals, now before this inquiry, which respond to those and overcome them. In particular, the issues of landscape and of heritage impacts found objectionable in the previous scheme have been addressed positively in the current proposals. The appeal scheme has kept a swathe of land to the south of the development area free of housing in order to maintain the separation of Tichfield with Great Posbrook Farm, while

proposing significant buffer planting on the south and east of the development area to the landscape and visual enhancement of the current settlement edge.

3. The Council's putative reasons for refusal identified (a) an in principle objection to development beyond the settlement boundaries; (b) harm to a 'valued landscape'; (c) less than substantial harm to the setting of Grade II* listed buildings; (d) loss of best and most versatile land; (e)-(k) the absence of a s.106 obligation securing social and other infrastructure. Reasons (e)-(k) have now been resolved to the Council's satisfaction.

4. The site is recognised, following the decision of the inspector on the previous scheme, to sit within a 'valued landscape' within the meaning of para. 174(a) of the NPPF. That does not mean, however, that no development cannot acceptably be brought forward within it. Nor does it mean that the landscape value within the 'valued landscape' is of equal value or sensitivity. Indeed, it is apparent that the area of land proposed for development is more influenced by the adjacent settlement of Tichfield than is the rest of the Lower Meon Valley as one moves south and east of the site. The scheme has responded positively to this and it is common ground that this will deliver an improved settlement edge when experienced from the south and east, compared to the existing, whilst delivering development in keeping with the 'village' character of the adjacent settlement.

5. As to heritage, while it is recognised the appeal site is in the setting of the listed (and locally listed) buildings in the former farmstead complex of Great Posbrook Farm, the analysis on behalf of the Appellants is that the appeal scheme will not harm the heritage significance of the Grade II* listed buildings, as alleged. Again, the relationship with the settlement of Posbrook will be improved. As such, on the Appellant's case, para. 202 of the NPPF will not be engaged, but even on the Council's case, the impact is only at 'the lower end' of a 'less than substantial harm', which the Appellant's planning evidence finds is more than adequately outweighed by the public benefits of the scheme.

6. Loss of best and most versatile land is acknowledged by the Council not to justify refusal of permission. This is correct, given the terms of the NPPF, asking that its

economic benefits be taken into account; there is a pressing need to release this land for much-needed housing and affordable housing in the Borough.

7. As noted above, this is an authority that has failed in its ability to demonstrate the required 5 year housing land supply (the figures lie between 3.57 years and 0.93 years), and as such footnote 8 of the NPPF applies to deem the 'most important policies' out of date. It is also an authority whose spatial strategy, dating from 2011, is itself out of date as being predicated on non-NPPF-complaint assessments of housing need, such that its settlement boundaries are to be considered out of date regardless of the operation of footnote 8 [see Lord Carnwath in Supreme Court, *Hopkins Homes*, at para 63]. They may be given reduced weight accordingly. Further, the Council has a woeful and worsening record in the delivery of affordable housing in its area.

8. In addition to the above, this is a development plan which has a 'contingency' or 'exceptions' policy in the terms of DSP40, precisely in order to permit development outside the out-of-date settlement boundaries in the absence of a 5 year housing land supply. This policy is subject to its own five criteria, which are recognised by the Council to operate as exceptions to (ie more generously than) the tests in the otherwise restrictive policies in the development plan. This must be right, or else the policy would be self-defeating, although recent inspectors at Newgate Lane North/South and Newgate Lane East have both found that, notwithstanding this, the citeria may still be too restrictive, given that the 5 year land supply shortfall continues to subsist.

9. With the 5 criteria met, policy DSP40 is satisfied and a scheme, under those circumstances falls to be considered in accordance with the development plan 'taken as a whole' [see Sullivan J in *Rochdale ex p Tew*] and para. 11(c) of the NPPF applies. However, were any one of the criteria not to be complied with, it is agreed by the parties that policy DSP40 is itself a (arguably *the*) 'most important policy' for the determination of the appeal and so is caught by para. 11(d), and footnote 8.

10. In this case, only criteria (iii) [for landscape] and (v) [for heritage] are said to be in issue. As will be explored in evidence, it is the Appellant's case that neither is breached by the scheme proposals. In respect of criterion (iii), policy does not require 'no' harm to landscape, it recognises that there will be harm by developing outside settlement boundaries, and requires that that harm be 'minimised'. There is no allegation of harm

to the strategic gap. In respect of criterion (v), the scheme has no unacceptable impact on the historic environment (either by having no harm, or in that any such harm is outweighed by the public benefits of the proposals).

11. As such, the evidence will show that this is a scheme which accords with policy DSP40 and, hence, the development plan taken as a whole. If and insofar as there is a breach of the criteria as alleged, the appeal scheme still needs to be determined within the prism of para. 11(d) of the NPPF; the manifest benefits more than adequately outweigh such harms as might be said to arise, and permission should be granted in the public interest.

12. Separate evidence and submissions will be made in respect of Habitats Regulations matters. Suffice it to say, at this stage, that both the Council and the Appellants are satisfied that the appeal scheme can be subject to a favourable 'appropriate assessment' by the Inspector as 'competent authority' such that the grant of planning permission is not blocked by the operation of the Habitats Regulations.

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7th December 2021

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