

**IN THE MATTER OF LAND TO THE EAST OF POSBROOK LANE, FAREHAM**  
**AND IN THE MATTER OF AN APPEAL BY FOREMAN HOMES LTD UNDER SECTION 78**  
**OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**PINS REF: APP/A1720/W/20/3254389**  
**LPA REF: P/19/1193/OA**

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**OPENING SUBMISSIONS**  
**ON BEHALF OF FAREHAM BOROUGH COUNCIL**

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*References prefaced by "CD" are to Core Documents.*  
*References prefaced by "Item" are to documents within Item folders on the Appeal website<sup>1</sup>.*

**A. INTRODUCTION**

1. These Opening Submissions are made on behalf of Fareham Borough Council ("the Council") in the above Inquiry proceedings into the proposal ("the Proposal") of Foreman Homes Ltd ("the Appellant") for an outline residential scheme on the Posbrook Lane site ("the Site").
2. The Proposal is controversial (attracting 137 objections at application stage<sup>2</sup> and more since) and for good reason: the location is highly sensitive, not only within a valued landscape<sup>3</sup>, but also within the setting of two Grade II\* listed buildings (the former farmhouse and the barn at the Great Posbrook former farmstead). Such sensitivities are rare in Fareham, and rare nationally. They provide severe challenges to any developer seeking to develop such a site for housing.
3. When the Appellant brought forward an earlier housing proposal for up to 150 dwellings ("the Previous Scheme") on land including the Site, it was rejected both by the Council and by Inspector Kenneth Stone on appeal. Inspector Stone's decision of 12<sup>th</sup> April 2019<sup>4</sup> is an important material consideration in this Appeal, and the principle of consistency attaches to it, such that,

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<sup>1</sup> <https://moderngov.fareham.gov.uk/ieListDocuments.aspx?CIId=363&MIId=4058&Ver=4>

<sup>2</sup> CDC.1 at §6.1

<sup>3</sup> Main SOCG (CDD.1) §2.9; Landscape SOCG (CDD.3) §13

<sup>4</sup> CDJ.2

although it is not binding on you, before departing from it you must have regard to the importance of ensuring consistent decisions and give reasons for any departures<sup>5</sup>. Inspector Stone found harm to this valued landscape and harm (at the middle of the less than substantial range) to the Grade II\* listed assets, together with additional (albeit limited) harm from the loss of best and most versatile agricultural land (“BMV land”) that would be occasioned. Notwithstanding the significant benefits of a scheme proposing up to 150 dwellings (including 40% affordable), the balance fell strongly against the Previous Scheme and the appeal was dismissed.

4. The Appellant’s response has been to come back with a reduced scheme. The Council readily acknowledges that the harms are thereby reduced, but of course so too are the benefits. And unfortunately, significant harms remain. The Proposal is contrary to the policies and spatial strategies of both the adopted and emerging local plans as well as NPPF policy, and the harms are significant. As well as the policy harm, these comprise landscape and visual harms to a valued landscape, harms to the significance of the two Grade II\* listed buildings, harms from loss of BMV land, and harms from inability to provide public open space. These matters (which are addressed in putative reasons for refusal (a) to (d) and (h)<sup>6</sup>) provide a firm basis for dismissing the Appeal.
5. So far as the remaining putative reasons for refusal are concerned (and also a further issue concerning habitats impacts to the New Forest which has arisen since the resolution was made) it is to be hoped that these will be resolved on completion and execution of unilateral undertakings which are well advanced.

**B. APPEAL PROPOSAL, SITE AND SURROUNDINGS**

6. The Proposal is an outline application for the erection of up to 57 dwellings, together with associated parking, landscaping and access from Posbrook Lane. It is set out in two plans, as

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<sup>5</sup> CDK.30 *North Wiltshire DC v SSE* (1993) 65 P. & C.R. 137 at 145

<sup>6</sup> CDC.3 page 18

listed in §3.4 of the Main Statement of Common Ground<sup>7</sup>, and the Appellant has produced a further illustrative site plan as part of the Appeal proceedings<sup>8</sup>.

7. The Site is a 4.05ha open field located in the countryside outside the settlement limits of Titchfield. A further 8.74ha of “blue line” land is required for mitigation to avoid harm to European Protected Sites from nutrients and impacts on Brent Geese and Waders<sup>9</sup>. All of this lies not only within countryside, but also within a valued landscape which extends from the edge of Bellfield immediately to the north of the Site and includes the Lower Meon Valley<sup>10</sup>. The Site is also immediately north of Great Posbrook. The Proposal would develop the northern part of the Site for housing, thereby intruding into the valued landscape and providing a substantial reduction in the gap between Titchfield and Great Posbrook<sup>11</sup>.

## **C. POLICY FRAMEWORK**

### **The Development Plan**

8. The starting point under the test under section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the PCPA”) is the development plan, which at a local level<sup>12</sup> comprises<sup>13</sup>:
  - a. Local Plan Part 1: Fareham Borough Core Strategy (adopted August 2011) (“the Core Strategy”);
  - b. Local Plan Part 2: Development Sites and Policies (adopted June 2015) (“the DSP”);  
and
  - c. Local Plan Part 3: Welborne Plan (Adopted June 2015) (“the Welborne Plan”).

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<sup>7</sup> CDD.1

<sup>8</sup> CDAA.1

<sup>9</sup> CDD.1a

<sup>10</sup> CDD.3 §13

<sup>11</sup> See the Agreed Dimensions Plan (CDD.3a) and the table at §2.2 of the Heritage SOCG (CDD.4)

<sup>12</sup> The Hampshire Minerals and Waste Plan is also part of the development plan, but is not relevant to this Appeal

<sup>13</sup> Main SOCG (CDD.1) §4.2

9. It is common ground that the Welborne Plan is not applicable to the determination of the Appeal, save for its relevance to the assessment of deliverable housing supply from Welborne<sup>14</sup>.
10. A range of policies from the Core Strategy and DSP are agreed to be relevant to this Appeal<sup>15</sup>, and the relevant provisions of these are helpfully summarised in §§5.4 to 5.24 of Mr Jupp’s Proof. Chief among these<sup>16</sup> is Policy DSP40, which expressly addresses the manner in which applications should be decided where (as here) a five-year housing land supply cannot be demonstrated. This policy should be given full (or at the very least substantial) weight in the planning balance and conflict with it should be a matter of the greatest consideration<sup>17</sup>. Anything less would fail to respect the primacy given by statute to the development plan<sup>18</sup>. DSP40 is therefore fundamental, but other policies are also relevant and should be given weight, as Mr Jupp describes<sup>19</sup>.

### **The Emerging Local Plan**

#### **Introduction**

11. The Council is in the process of preparing a new Local Plan (“the Emerging Local Plan”) to address development needs in the Borough up until 2037. On adoption it will replace the Core Strategy and DSP, but not the Welborne Plan. On 30<sup>th</sup> September 2021 it was submitted to the Secretary of State for independent examination, in accordance with the timetable under the Council’s Local Development Scheme<sup>20</sup> (“LDS”). Under the LDS the Emerging Local Plan is expected to be subject to independent examination in Winter/ Spring 2021/ 2022 and adopted in Autumn/ Winter 2022.
12. The parties disagree as to the level of weight to be attached to the Emerging Local Plan (with the Appellant suggesting “limited weight” and the Council “some weight”<sup>21</sup>). On either position, it is important to consider its policies, as Mr Jupp does in his proof. The Site remains in the

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<sup>14</sup> Main SOCG (CDD.1) §4.7

<sup>15</sup> Main SOCG (CDD.1) §§4.3 and 4.4

<sup>16</sup> Main SOCG (CDD.1) §4.6

<sup>17</sup> Jupp Proof §6.33

<sup>18</sup> CDK.4 *Hopkins Homes v SSCLG* [2017] 1 WLR 1865 at [21] *per* Lord Carnwath

<sup>19</sup> Jupp Proof §§6.34 to 6.36

<sup>20</sup> CDF.6 at §3.8 Table 1

<sup>21</sup> Main SOCG §4.15

countryside in the Emerging Local Plan and is within an Area of Special Landscape Quality under emerging Policy DS3, reflecting its importance as a valued landscape<sup>22</sup>.

#### **D. 5-YEAR HOUSING LAND SUPPLY**

13. Since this is a residential-led proposal, it is important to understand the housing land supply position in the Borough. Happily, as set out in the 5YHLS SOCG<sup>23</sup>, the parties have reached considerable agreement on five-year housing land supply issues, as a result of which it should not be necessary to call witnesses on housing land supply issues:

- a. 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 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025<sup>24</sup>.
- b. It is agreed that the housing requirement falls to be measured against the local housing need figure calculated using the standard method<sup>25</sup>.
- c. 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)<sup>26</sup> but that this requires a 20% uplift, giving a five-year requirement of 3,234 dwellings<sup>27</sup>.
- d. It is agreed that the Council is unable to demonstrate a five-year supply of housing for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025<sup>28</sup>. The Council considers the 5YHLS position to be 3.57 years while the Appellant considers it to be 0.93 years<sup>29</sup>.
- e. 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

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<sup>22</sup> CDD.6

<sup>23</sup> CDD.2

<sup>24</sup> CDD.2 §3.1

<sup>25</sup> CDD.2 §3.2

<sup>26</sup> CDD.2 §3.3

<sup>27</sup> CDD.2 §§3.4-5

<sup>28</sup> CDD.2 §2.1

<sup>29</sup> CDD.2 §§4.1 and 4.2

of housing from the Proposal is significant; and as such (on principles established by the Court of Appeal in *Hallam Land Management Ltd v SSCLG* [2018] EWCA Civ 1808<sup>30</sup>) it is not considered necessary for you to conclude on the precise extent of the shortfall<sup>31</sup>. Nonetheless, Mr Jupp provided substantial detail in section 7 of his Proof, explaining recent improvements in the Council's five-year housing land supply position, why the 3.57 year figure on which it relies is robust, and why it is likely to continue to improve in the future through plan-led delivery.

14. It is also common ground that there is a significant unmet affordable need within the Borough<sup>32</sup>, something which Mr Jupp explores in section 7 of his Proof.

#### E. MAIN ISSUES

15. In your post-Case Management Conference Note of 21<sup>st</sup> September 2021, you characterised the main issues as follows:

- (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: (i) the integrity of European Protected Sites; (ii) affordable housing; (iii) education; (iv) open space; and (v) public rights of way.

16. On main issue 1, the Council will show that the Appellant has wrongly overestimated the influence of the existing settlement edge in relation to the northern part of the Site and, for this and a range of other reasons explored by Mr Croot, understated the landscape and visual

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<sup>30</sup> CDK.8

<sup>31</sup> CDD.2 §5.3

<sup>32</sup> Main SOCG (CDD.1) §4.14

impacts of the Proposal, which would in reality cause permanent harm to landscape character and visual amenity and harm the valued landscape of which the Site is a constituent part. Such harm is contrary to the requirements of NPPF paragraph 170(a) and (b) to protect and enhance valued landscapes and to recognize the intrinsic character and beauty of the countryside and contrary also to adopted and emerging policy, including Policy DSP40(iii).

17. On main issue 2, the Council will show (through Ms Markham's evidence, and supported by the position of Historic England<sup>33</sup>) that (contrary to the Appellant's position) the overall impact of the Proposal is to cause harm (at the lower end of the less than substantial scale) to the significance of the two Grade II\* listed buildings at Great Posbrook. The phrase "less than substantial" risks belying the importance of this issue. Any harm to the significance of listed buildings engages a statutory "strong presumption" against permission<sup>34</sup>. As the Court of Appeal made clear in *Barnwell*, less than substantial harm does not equal a less than substantial objection to a proposal<sup>35</sup>; on the contrary, it is a matter of "considerable importance and weight"<sup>36</sup>, a fortiori where, as here, one is dealing with highly graded heritage assets<sup>37</sup>. This is reflected in the NPPF, which requires "great weight" to be given to the conservation of listed buildings, and states that the "more important the asset, the greater the weight should be"<sup>38</sup>. As Grade II\* listed buildings, the farmhouse and barn are within the top 8% of listed buildings in the country<sup>39</sup> and there are only 20 such assets in the Borough<sup>40</sup>. The harm caused by the Proposal to these important heritage assets, less than substantial though it may be, is a matter of great weight in the planning balance.

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<sup>33</sup> CDB.11. This contains a clear finding of overall less than substantial harm. Although Historic England expressed "no objection to the application on heritage grounds", it is clear that this was on the basis that Historic England were content for the Council to carry out the heritage and planning balances, as the "Recommendation" on page 3 of the consultation response explains.

<sup>34</sup> CDK.31 at [23]

<sup>35</sup> CDK.31 at [29]

<sup>36</sup> CDK.31 at [22]

<sup>37</sup> CDK.31 at [28]

<sup>38</sup> NPPF §199

<sup>39</sup> Markham Proof §1.27

<sup>40</sup> And four at Grade I (Markham Proof §8.13)

18. On main issue 3, the Council will show that the Proposal will lead to the loss of 7.9ha of Grade 3a BMV land<sup>41</sup>. It is common ground<sup>42</sup> that the loss of BMV land alone (i.e. if there were no other harms) would not be sufficient to warrant the refusal of planning permission. But it is also common ground that it remains a matter to be weighed as a harm in the overall planning balance. The Appellant wrongly suggests that the loss of BMV land would not be an unacceptable environmental implication for the purposes of Policy DSP40(v)<sup>43</sup>. That is contrary to the approach of Inspector Stone<sup>44</sup> in connection with a smaller loss than at issue of 4.1ha<sup>45</sup>. As Mr Jupp explains, the loss of BMV land is in breach of DSP40(v) and several other adopted and emerging policies, and is a matter of limited, but certainly not insignificant weight<sup>46</sup>.
19. Finally, on main issue 4, considerable common ground has been reached on issues relating to European Sites, affordable housing, education and public rights of way, and it is to be hoped that these will be resolved on completion and execution of unilateral undertakings which are well advanced. On public open space, however, an issue remains. As Mr Jupp will show<sup>47</sup>, public open space is required (beyond the LEAP currently offered) but there is insufficient space for this to be provided within the 1.61ha area at the north of the site. The Appellant's suggestion that public open space could be provided within the redline area to the south of the proposed houses in the gap immediately to the north of Great Posbrook<sup>48</sup> raises heritage and landscape concerns, as Ms Markham and Mr Croot will show. Public open space should not, therefore, be provided in that location and the Appellant has not indicated any other suitable locations. The inclusion of open space obligations in the most recent draft of the main unilateral undertaking (subject to a blue pencil clause) therefore does not resolve the in principle issue, and the inability of the Proposal to provide public open space without heritage and landscape impacts is a negative in the planning balance.

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<sup>41</sup> Jupp Proof §§9.30 to 9.32

<sup>42</sup> Main SOCG (CDD.1) §4.13

<sup>43</sup> Main SOCG (CDD.1) §4.13

<sup>44</sup> CDJ.2 §66

<sup>45</sup> CDJ.2 §46 – the larger total area for the current appeal is the result of the additional mitigation now required in relation to nitrates and Brent Geese and Waders.

<sup>46</sup> Jupp Proof §§9.32 to 9.36

<sup>47</sup> Jupp Proof §§9.40 to 9.57

<sup>48</sup> Brown Proof §§5.65 and 5.73

## **F. BENEFITS OF THE PROPOSED DEVELOPMENT**

20. In recommending refusal, Officers (and in accepting that recommendation, Members) had proper regard to the benefits of the Proposal<sup>49</sup> and Mr Jupp very fairly does the same in section 10 of his Proof. The main benefits of the Proposal are the provision of market and affordable housing and associated economic benefits, as well as (albeit limited) environmental benefits. Such benefits deserve significant weight, though they are obviously much reduced in comparison with the Previous Scheme.

## **G. PLANNING BALANCE**

21. Mr Jupp addresses the planning balance in section 10 of his Proof, finding that planning permission should be refused. As he explains, he proceeds on the assumption (which is likely but not certain) that a unilateral undertaking resolving the habitats issues and securing the affordable housing provision and education and public rights of way contributions will be executed. If the affordable housing, education and public rights of way issues are not resolved, his conclusion that the planning permission should be refused will be further reinforced. And if the habitats issues are not resolved (so as to provide you, as competent authority, with certainty beyond a reasonable scientific doubt that any adverse effects on the integrity of any European Sites will be avoided), there would be a statutory bar to granting permission and so a planning balance would not arise (since there can be no suggestion that the derogation tests under Regulation 64 of the Conservation of Habitats and Species Regulations 2017 could be met).

22. As in all cases, the Appeal Proposal must be determined in accordance with the development plan unless material considerations indicate otherwise (as set out in section 38(6) of the PCPA). The NPPF is a material consideration in the section 38(6) test, but does not displace the primacy given to the development plan. The Council considers that the Proposal breaches a number of development plan policies and the development plan as a whole. This includes Policy DSP40, to which the “greatest weight” must be given, since it sets a plan-led and fully NPPF-compliant approach to circumstances in which (as is currently the case) the Council cannot demonstrate a five-year housing land supply. The question, then, is whether there should be a decision otherwise than in accordance with the development plan.

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<sup>49</sup> CDC.1 at §8.79

23. As a result of the absence of a five-year housing land supply (and assuming the habitats issues are resolved), paragraph 11(d) of the NPPF is engaged.
24. Turning to the first limb of paragraph 11(d), Mr Jupp considers that the less than substantial harm to the Grade II\* listed buildings has not been clearly and convincingly justified for the purposes of paragraph 200 of the NPPF. Applying the *Forge Field*<sup>50</sup> and *Stonehenge*<sup>51</sup> cases, he considers that there clearly will be other sites within the Borough which avoid harm to valued landscapes and to designated heritage assets (particularly highly graded assets such as the farmhouse and barn). This alternatives point is powerful: there is no good reason for putting an ordinary housing proposal in this location unless (which, contrary to the Appellant's position, is not the case here) harms to heritage and landscape can be avoided. Mr Jupp then goes on to apply the balance under paragraph 202 of the NPPF, finding that it falls against the Proposal whether or not alternatives are considered. The public benefits are significant, but not out of the ordinary, and they do not outweigh the heritage harms to these rare and highly graded assets.
25. There is therefore a "clear reason" on heritage grounds for dismissing the Appeal for the purposes of paragraph 11(d)(i) and the tilted balance does not fall to be applied. But as Mr Jupp sets out, whether the balance is tilted or not, it falls firmly against the Proposal. The harms of the Proposal, although reduced from the Previous Scheme, remain highly significant and they significantly and demonstrably outweigh the benefits.

## **H. OVERALL CONCLUSIONS**

26. For these reasons, which will be explored in evidence, I will in due course invite you to dismiss the Appeal.

**NED HELME**  
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**7<sup>th</sup> December 2021**

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<sup>50</sup> CDK.21

<sup>51</sup> CDK.29