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

CLOSING SUBMISSIONS

ON BEHALF OF FAREHAM BOROUGH COUNCIL

References prefaced by "CD" or "ID" are to Core or Inquiry Documents.
References prefaced by "Item" are to documents within Item folders on the Appeal website[1].

A. INTRODUCTION

1. These Closing 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 to put an ordinary housing scheme into a location which is anything but ordinary. That is not to depreciate ordinary housing schemes: there is an acknowledged local need for both market and affordable housing, and there are associated (primarily economic and social) benefits that inevitably flow from such schemes. These benefits are to be welcomed, but only where unacceptable harms are not occasioned.

3. The difficulty for the Appellant is that this is a highly sensitive location, not only within a valued landscape[2], but also within the setting of two Grade II* listed buildings (the former farmhouse and the barn at the Great Posbrook former farmstead). As I noted in opening[3], such sensitivities are rare in Fareham, and rare nationally, and they provide severe challenges to any developer seeking to develop such a site for housing. Given these sensitivities, it is unsurprising that the

[1] https://moderngov.fareham.gov.uk/ieListDocuments.aspx?CId=363&MId=4058&Ver=4
[2] Main SOCG (CDD.1) §2.9; Landscape SOCG (CDD.3) §13
[3] ID.4

Proposal has been controversial, attracting 137 objections at application stage[4] (including from the Fareham Society which, as Mr Marshall explained, has six to seven hundred members) and more since.

4. 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 12th April 2019[5] is an important material consideration in this Appeal, and the principle of consistency attaches to it, such that, 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[6]. 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.

5. The Appellant has (rightly) accepted Inspector Stone's decision[7], and accepted therefore, that had the Previous Scheme come forward it would permanently have harmed this valued landscape and these important heritage assets.

6. Its 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. As the Council's evidence has shown, 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 the harmful and inadequate public

[4] CDC.1 at §6.1
[5] CDJ.2
[6] CDK.30 ***North Wiltshire DC v SSE*** (1993) 65 P. & C.R. 137 at 145
[7] Confirmed by Messrs Smith, Froneman and Brown under XX

open space provision. These matters (which are addressed in putative reasons for refusal (a) to (d) and (h)[8]) provide a firm basis for dismissing the Appeal.

7. So far as the remaining putative reasons for refusal are concerned, these have now been resolved between the parties, subject to completion and execution of the main unilateral undertaking. The further issue concerning habitats impacts to the New Forest which has arisen since the resolution was made has not been fully resolved, with the Appellant and Council differing on whether mitigation is required, but the Council accepts that an adverse effect on integrity will be avoided if mitigation is secured as proposed in the New Forest unilateral undertaking[9].

B. APPEAL PROPOSAL, SITE AND SURROUNDINGS

8. As you have heard, 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 listed in §3.4 of the Main Statement of Common Ground[10], and the Appellant has produced a further illustrative site plan as part of the Appeal proceedings[11] as well as additional plans associated with the unilateral undertakings.

9. The Site is a 4.05ha open field located in the countryside outside the settlement limits of Titchfield[12]. There is further "blue line" land totalling 8.74ha[13]. A 6.50ha area comprising the east of the Site and blue line land is needed as a Bird Conservation Area for mitigation to avoid harm to European Protected Sites through impacts on Brent Geese and Waders[14]. In order to achieve nutrient neutrality, the whole of the BCA and also the area of the site not being developed for housing and associated infrastructure would be maintained as "designated open space or Suitable Alternative Natural Greenspace"[15] (with a 5kg/ha/yr nitrogen leaching rate).

[8] CDC.3 page 18
[9] See the Addendum: Ecology SOCG
[10] CDD.1
[11] CDAA.1
[12] CDD.1a
[13] CDD.1a
[14] CDD.1a
[15] CDH.1 at §§4.62-4 and the Appellant's Nitrogen Budget Calculations at CDAA.5a and CDAA.5b

10. All of the land 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[16]. 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 separation between Titchfield and Great Posbrook[17].

C. POLICY FRAMEWORK

The Development Plan

11. 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[18] comprises[19]:

    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").

12. 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[20].

13. A range of policies from the Core Strategy and DSP are agreed to be relevant to this Appeal[21], and the relevant provisions of these are helpfully summarised in §§5.4 to 5.24 of Mr Jupp's Proof. Chief among these[22] 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

[16] CDD.3 §13
[17] See the Agreed Dimensions Plan (CDD.3a) and the table at §2.2 of the Heritage SOCG (CDD.4)
[18] The Hampshire Minerals and Waste Plan is also part of the development plan, but is not relevant to this Appeal
[19] Main SOCG (CDD.1) §4.2
[20] Main SOCG (CDD.1) §4.7
[21] Main SOCG (CDD.1) §§4.3 and 4.4
[22] Main SOCG (CDD.1) §4.6

demonstrated. This policy should be given very least substantial weight in the planning balance and conflict with it should be a matter of the greatest consideration[23]. Anything less would fail to respect the primacy given by statute to the development plan[24]. There have been findings in recent appeal decisions that criteria (ii) and (iii) of Policy DSP40 may be unduly restrictive in striking the balance between housing land supply and other factors, leading to "considerable" rather than very substantial weight being accorded to those criteria[25]. Whether or not such an approach may be appropriate for ordinary landscapes, it should not be adopted for valued landscapes, where the NPPF requires protection and enhancement. Moreover, no such views have been expressed about criterion (v), and it has recently been found (albeit in the context of traffic impacts) that "it is consistent with the Framework and conflict with that requirement [i.e. criterion (v)] would be a matter of the greatest weight"[26].

14. Policy DSP40 is therefore fundamental[27], but other policies are also relevant, as Mr Jupp described. 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[28] and that the weight to be attributable to conflicts with policies CS14 (and CS22, although this is not alleged to be breached) is reduced, but only to the extent they derive from settlement boundaries that reflect out of date housing requirements[29]. Mr Jupp accepted that the parts of those policies specifically relating to the provision or location of new housing should receive limited weight due to the shortfall in five-

[23] Jupp Proof §6.33 and in XX and Re-X
[24] CDK.4 ***Hopkins Homes v SSCLG*** [2017] 1 WLR 1865 at [21] *per* Lord Carnwath
[25] CDJ.4 at §110; CDJ.17 at §46
[26] CDJ.4 at §111
[27] On the facts of this case, Mr Jupp accepted under cross examination that if (contrary to his and the Council's position) DSP40 is complied with, it would mean that there was compliance with the development plan overall. That is because DSP40 provides a contingency position which, in this case, addresses the issues addressed in the other relevant policies. However, for the avoidance of doubt, the Council does not accept that compliance with DSP40 inevitably means accordance with the development plan overall. A decision-taker must always consider the extent of compliance and non-compliance with all relevant policies, and then form an overall judgement on whether a proposal is in accordance with the development plan taken as a whole (***ex parte Milne*** CDK.12). Moreover, DSP40 indicates that (in the absence of a 5YHLS) additional housing sites "may be" (not "will be") permitted where they meet criteria (i) to (v). All of this is only of academic interest on the Council's case, since it considers that DSP40 is breached and the breaches of other policies add further to the weight and significance of that breach.
[28] Main SOCG (CDD.1) §§4.4 and 4.5
[29] Main SOCG (CDD.1) §4.4

year housing land supply[30]. However, as he noted, policies CS14 and DSP6 both contain criteria which to seek to control development which would adversely affect landscape character and appearance and, since the Site is within a valued landscape, the landscape protection elements of those policies (consistent as they are with the NPPF[31]) should attract significant weight, in line with Inspector Stone's decision on the Previous Scheme[32], rather than the limited/little weight attributed in the two Newgate Lane decisions, which did not involve valued landscapes[33].

15. So far as Policy CS16 is concerned, Mr Jupp accepted (in line with the Newgate Lane North and South decision[34]) that the approach of this policy is more onerous than that in paragraph 174(b) of the NPPF, but as he found, it is nonetheless broadly aligned with the NPPF requirement that the economic and other benefits of BMV land should be recognised in decisions, and so should attract significant weight[35].

16. The remainder of the relevant policies are fully consistent with the NPPF, are not rendered out of date by the absence of a five-year supply, and should attract full weight[36].

The Emerging Local Plan

Introduction

17. 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 30th 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[37] ("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.

[30] Jupp Proof §6.34
[31] There is no dispute about this
[32] CDJ.2 at §67
[33] CDJ.4 at §106 and CDJ.17 at §45
[34] CDJ.4 §100
[35] Jupp Proof §6.35
[36] Jupp Proof §6.36
[37] CDF.6 at §3.8 Table 1

Weight to be Attached to the Emerging Local Plan

18. The weight to be attached to the Emerging Local Plan is governed by the three factors set out in paragraph 48 of the NPPF. On the first of these, the Plan is at a relatively advanced stage of preparation, having been submitted for examination. On the third, the Council considers its policies to be consistent with the NPPF. However, it has not yet been through independent examination and inevitably there are therefore still unresolved objections to its policies (the second factor under paragraph 48). In these circumstances, the Council suggests "some weight" should currently be attached to the Emerging Local Plan, rather than the "limited weight" suggested by the Appellant[38]. However, on either position, it is important to consider its policies, as Mr Jupp did.

Treatment of the Appeal Site under the Emerging Local Plan

19. The Site remains in the countryside in the Emerging Local Plan and (although this was not even mentioned in Mr Brown's Proof) is within an Area of Special Landscape Quality under emerging Policy DS3, reflecting its importance as a valued landscape[39]. In this regard, the Emerging Local Plan and NPPF sing with one voice: this is a landscape which should be protected and enhanced, something which the Proposal regrettably militates against.

The National Planning Policy Framework

20. The Application came before the Planning Committee on 24th June 2020[40]. Its consideration therefore predated the revisions to the NPPF that came into effect on 20th July 2021. The most relevant provisions of the current NPPF were addressed in Mr Jupp's evidence, and the thrust of these are unchanged from the previous version.

D. 5-YEAR HOUSING LAND SUPPLY

21. 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[41], the parties have reached

[38] Main SOCG §4.15
[39] CDD.6
[40] CDC.3
[41] CDD.2

considerable agreement on five-year housing land supply issues, as a result of which you have been able to take the housing evidence as read:

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 1st January 2021 to 31st December 2025[42].

b. It is agreed that the housing requirement falls to be measured against the local housing need figure calculated using the standard method[43].

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)[44] but that this requires a 20% uplift, giving a five-year requirement of 3,234 dwellings[45].

d. 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[46]. The Council considers the 5YHLS position to be 3.57 years while the Appellant considers it to be 0.93 years[47].

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 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[48]) it is not considered necessary for you to conclude on the precise extent of the shortfall[49]. Nonetheless, Mr Jupp provided substantial detail in section 7 of his Proof, explaining recent improvements in the Council's five-year housing land supply

[42] CDD.2 §3.1
[43] CDD.2 §3.2
[44] CDD.2 §3.3
[45] CDD.2 §§3.4-5
[46] CDD.2 §2.1
[47] CDD.2 §§4.1 and 4.2
[48] CDK.8
[49] CDD.2 §5.3

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.

E. AFFORDABLE HOUSING

22. It is also common ground that there is a significant unmet affordable need within the Borough[50], something which Mr Jupp explored in section 7 of his Proof, and he rightly accorded "substantial weight" to the social benefits as a whole (of which affordable housing provision is a part)[51]. On its own, the affordable housing provision is clearly a significant benefit, but it is important not to overexaggerate it. Mr Brown appeared to suggest that "great weight" might be appropriate[52], but this term (which the NPPF accords in a very limited range of circumstances of which this is not one) is not a term used in relation to affordable housing in any of the decisions before you. Moreover, Mr Brown's examples need considering in their context. On these:

    a. In the Land East of Newgate Lane (North and South) decisions, "substantial" weight was accorded to affordable housing, though both schemes were larger than the Proposal[53] (at 75 and 115 dwellings with, in each case, 40% affordable housing).

    b. In the Land at Newgate Lane East decision, the two schemes were again larger (at 99 dwellings each, with 40% affordable housing[54]) and the "considerable" weight to which Mr Brown referred[55] was accorded to the benefits as a whole, not just to affordable provision[56].

    c. The Watery Lane decision[57] was for up to 750 dwellings with a policy compliant level (in that case 25%[58]) of affordable housing. Moreover, the "very substantial weight"

[50] Main SOCG (CDD.1) §4.14
[51] Jupp Proof §10.8
[52] Main Proof §4.50
[53] CDJ.4 at page 1 and §97
[54] CDJ.17 at page 1 and §35
[55] Proof §4.42
[56] CDJ.17 at §51
[57] Brown Proof §4.46
[58] IR95

attributed by the Secretary of State was to the "benefits of the provision of affordable and market housing", not affordable housing on its own[59].

d. The Satchell Lane decision was for up to 70 dwellings with a policy compliant level (in that case 35%) of affordable housing. Significant weight was attached to "the provision of market and especially affordable housing"[60].

23. In this case, the Proposal is a relatively small scheme (a little over a third the size of the Previous Scheme) providing affordable housing at the minimum policy compliant level under Policy CS18. Significant weight is clearly appropriate, and in combination with the other social benefits contributes to a package of social benefits to which substantial weight attaches (albeit much reduced from the Previous Scheme) but great weight is not, nor is substantial weight to affordable housing on its own.

F. INTRODUCTION TO MAIN ISSUES

24. In your post-Case Management Conference Note of 21st 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.

25. I turn to each of these in turn.

[59] DL53

[60] Brown Proof §4.47 quoting §64 of the decision letter

G. MAIN ISSUE 1: LANDSCAPE AND VISUAL IMPACTS

Introduction

26. At the appeal into the Previous Scheme, the Appellant underplayed the landscape and visual impacts in a range of respects, including:

    a. by overemphasising the fringe influences of the previous appeal site (which includes the Site) through relying on the flawed inclusion of the majority of the site within the Open Coastal Plain: Fringe Character landscape type under the Fareham Landscape Assessment 2017[61], when the whole site was more appropriately identified as Open Valley Side[62]; and

    b. by denying that the appeal site formed part of a valued landscape[63].

27. Inspector Stone found against the Appellant on both issues and found material harm to the character and appearance of the area, resulting in harm to a valued landscape[64].

28. Mr Smith indicated under cross examination that he and the Appellant have accepted Inspector Stone's findings on landscape and visual issues and sought to respond to them in the current Proposal. It is undeniable that there has been some progress: the current Proposal is about 38% the size of the Previous Scheme[65] and its landscape and visual impacts are consequently reduced, but as Mr Croot explained, unacceptable harms remain. The Appellant disagrees, but although it has purported to accept Inspector Stone's findings, in reality it is continuing to overplay the influence of the existing settlement edge and underestimating the impacts in a number of respects.

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[61] CDG.2
[62] CDJ.2 at §22
[63] CDJ.2 at §28
[64] CDJ.2 §31
[65] Mr Smith's repeated suggestion in his Proof (§§74, 123, 174 and 196) of a reduction to 25% of the original area is based on an inappropriate comparison of a much more loosely drawn site for the Previous Scheme with a tightly drawn area for the current (see Smith Appendices PL-1). The fairer comparison (as shown in CDD.3a) is between 4.23ha and 1.61ha, i.e., a reduction to 38% of the Previous Scheme, commensurate with the reduction in dwelling numbers.

The Meon Valley

29. The Meon Valley (which includes the Site) is one of the most important landscapes not only in Borough, but in the region too.

30. At the County level, it forms landscape character area 3e in the Hampshire Integrated Character Assessment ("HICA")[66], and this recognises not only that the landscape *"has largely resisted expansion from adjoining urban areas and has remained relatively unchanged in recent times"* but also that it is threatened by development including *"[d]evelopment creeping up the valley side and tall structures on the skyline"*, with the valley crests being *"particularly vulnerable to development"*.

31. These themes, which are of key relevance to this appeal given the location and topography of the Site, are also evident in the Fareham Landscape Assessment 2017[67], in which the Site is included within Local Landscape Character Area 6.1, the Lower Meon Valley (and specifically within subarea 6.1b)[68]. The importance of the landscape and its vulnerability to *"urban expansion and other forms of development pressure"* are both emphasised, consistently with the HICA.

32. As you have heard, the Council is seeking to further strengthen the protection of the Meon Valley by designating it (including the Site) as an Area of Special Landscape Quality under the Emerging Local Plan[69]. The emerging designation is supported[70] by a "Technical Review of Areas of Special Landscape Quality and Strategic Gaps 2020"[71] produced by Hampshire County Council, which scores subarea 6.1b (within which the Site sits) as "high match" (the highest rating possible) against all of the GLVIA3 Box 5.1 criteria[72].

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[66] CDG.3
[67] CDG.2
[68] See the quotes at §§3.3.1 and 3.3.2 of Mr Croot's Proof
[69] CDF.5 and CDD.6
[70] As he accepted under XX, Mr Smith's suggestion in §33 of his Proof that the ASLQ designation is based on no additional assessment beyond the 2017 Assessment (CDG.2) is incorrect. The ASLQ designation is based not only on the 2017 Assessment, but also the Technical Review (CDG.4) which itself involved desktop review and site survey work.
(2020) (see §3.4.7 of Mr Croot's Proof).
[71] CDG.4
[72] Croot Proof §3.4.7

33. Although the Meon Valley is not a statutorily designated landscape, therefore, Mr Croot was plainly right to emphasise that it is nonetheless a valued landscape at the higher end of the undesignated valued landscape category[73] and to emphasise its vulnerability to development pressures. If a lax attitude is taken to the protection of such landscapes, the risk of *"chipping away of the wider asset by incremental development"*[74] is all too real, risking the death of a thousand cuts and the "*creeping urbanisation*" Inspector Stone found from the Previous Scheme[75].

The Influence of the Urban Edge

34. The Appellant has sought to make a great deal of Inspector Stone's findings that the urban edge of Bellfield was (at that time) "open and harsh with little by way of softening landscaping"[76]. This is flawed for two reasons.

35. First, although he found that it was "undeniable" that a harsh edge was "there" and that there was a "lack of screening" and "a harsh and readily visible urban edge"[77], this was in the context of Inspector Stone finding (contrary to the Appellant's then argument) that none of the appeal site was "Fringe Character". Inspector Stone gave a host of reasons in support of his view, including that: (i) the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site; (ii) while there was a break in the slope this was minimal and did not change the characterisation from a gentle slope; and (iii) there were minor variations across the site but this was not such a feature as would change the character type of the site. It was in this context that Inspector Stone addressed the urban edge, finding that it was "undeniable it is there" and that there "is a lack of screening and… a harsh and readily visible urban edge" but going on to emphasise the "distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below". Inspector Stone therefore concluded that the Appellant had given "too much weight" to the influence of the urban edge and consequently underestimated the effect of the proposed development. And he then went on to find that the "characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which

[73] Croot Proof §3.3.3
[74] Croot Proof §3.4.5
[75] CDJ.2 §26
[76] CDJ.2 §21 and also 23 and 26.
[77] CDJ.2§23

includes sloping landform, a lack of woodland with views[78] across the valley floor and is generally pastoral with some intrusive influences of roads or built development"[79].

36. The gravamen of Inspector Stone's findings was therefore to depreciate the Appellant's suggestion of the (albeit, as he then considered it to be, harsh) edge's influence on the appeal site, and to emphasise the conformity of the whole of the appeal site to the Open Valley Side landscape type. It was emphatically not an encouragement to come back with a new scheme supported by an argument paying lip service to Inspector Stone's finding that the whole of the appeal site was Open Valley Side (rather than Fringe Character) while seeking to re-emphasise the influence of the settlement edge.

37. The second flaw in the Appellant's emphasis on the influence of the existing urban edge is that it has softened since 2018. The softening is clear in comparing the winter views 3 and 7 in Mr Smith's Appendices (from February 2018) with those in ID.10 (from November 2021). And contrary to Mr Smith's and Mr Froneman's views, in the baseline scenario it is to be expected (especially in the current age of increased environmental responsibility) for the edge to continue to soften into the future.

Landscape Sensitivity of the Appeal Site and Surroundings

38. Unlike at the last appeal, the Appellant now recognises that the whole of Site forms part of a valued landscape, placing it out of the ordinary beyond mere countryside in terms of the value it holds. However, contrary to the approach of Inspector Stone, Mr Smith asserted a "gradient of character" across the Site, with the "northern edge being most influenced by fringe characteristics"[80]. On this basis, Mr Smith downgraded the northern edge from "local authority" to "community value", so reducing the sensitivity. As Mr Croot explained, this is a flawed approach.

[78] It is common ground that there are open views to and across the Lower Meon Valley from the Site (CDD.3 §20)
[79] CDJ.2§24
[80] Smith Proof §101

39. The appeal decisions, and a High Court judgment regarding one of them, on which Mr Croot relied (and on which he was not challenged) are clear that, for the purposes of judging its landscape value, a small site (and still less part of a site) should not be assessed in isolation but should be evaluated in the context of the wider landscape of which it is an integral part:

    a. In the Wendover decision[81] the Inspector stated as follows in paragraphs 65 and 66 (respectively):

        > "…The small site itself may not exhibit any of the demonstrable physical features but as long as it forms an integral part of a wider 'valued landscape' I consider that it would deserve protection under the auspices of paragraph 109 of the [2012] Framework…."
        >
        > "When assessing what constitutes a valued landscape I consider it more important to examine the bigger picture in terms of the value of the site and its surroundings. That is not to borrow the features of the adjoining land but to assess the site in situ as an integral part of the surrounding land rather than divorcing it from its surroundings and then to conduct an examination of its value.".

    b. Moreover, Mr Justice Ouseley supported the Inspector's approach, saying as follows in a subsequent High Court judgment following a challenge to that decision[82]:

        > "It would be bizarre if the way in which the red line was drawn, defining the site on whatever basis was appropriate, and which need have nothing to do with landscape issues, crucially affected landscape evaluation. It would be equally bizarre to adopt a wholly artificial approach to landscape evaluation where, in most cases, a development site is but part of a wider landscape."

    c. This approach was also confirmed in the Didcot decision[83], where the Inspector concluded at paragraph 30 that:

        > "Determining whether a landscape should be considered to be valued is likely to be based on a consideration as to whether the wider landscape of which the Appeal Site forms part is valued rather than whether the Appeal Site of itself merits such a notation."

[81] CDJ.19
[82] CDK.32
[83] CDJ.20

40. The Landscape Institute's Technical Advice Note regarding assessment of landscape value[84] also emphasises at page 12 that:

> "When assessing landscape value of a site as part of a planning application or appeal it is important to consider not only the site itself and its features / elements / characteristics / qualities, but also their relationship with, and the role they play within, the site's context. Value is best appreciated at the scale at which a landscape is perceived – rarely is this on a field-by-field basis."

41. Of course, when looking at a tract of land such as the Lower Meon Valley, there will be variation across it. However, as Mr Croot emphasised, the value attributed to a valued landscape as a whole entity is the common denominator and is not artificially further divisible in terms of the value it is ascribed for the purposes of assessment[85]. This is for good reason, as the Technical Advice Note recognises in connection with National Parks and AONBs in footnote 40 on page 41:

> "In cases where a particular area within a National Park or AONB may not demonstrate the level of quality expected of its designation status, this does not mean that its value is diminished. Such an area is still a component of the nationally designated area with the characteristics associated with the park or AONB as a whole, and the aim should be to bring it back or much closer to the quality and character of the wider designated area so that it can be a positive contributor to the statutory purpose (to conserve and enhance the area's natural beauty)."

42. This is equally applicable to valued landscapes outside National Parks and AONBs, where there is no statutory purpose to "conserve and enhance" but where there is a directly analogous requirement under paragraph 174(a) of the NPPF to "protect and enhance".

43. The Appellant's approach of salami-slicing a single field to artificially lower the value and sensitivity of part of it is contrary to all of this, and would run wholly counter to the aim of "protection and enhancement", allowing any areas of perceived lower quality to be picked off and further degraded, and then areas near them picked off on the basis of new fringe influences, and so on. It would be a recipe for the chipping away of valued landscapes, about which Mr Croot rightly warned[86]. Rather, the whole of the Site is of local authority value and deserves to be protected and enhanced.

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[84] CDH.42
[85] Croot Proof §5.1.8
[86] Croot Proof §3.4.5

Magnitude of Change from the Proposal

44. In addition to underestimating the sensitivity of the Appeal Site, the Appellant also underestimated the potential Magnitude of Change both landscape and visual receptors would experience as a result of the Proposal in two respects.

45. First, the Appellant relied solely on a Zone of Theoretical Visibility ("ZTV") assuming 8m mitigation planting[87]. But in the short to medium term[88] before the mitigation matures, the visibility will be far greater, as Mr Croot's ZTV[89] (assuming no mitigation planting) makes clear. Moreover, the Appellant's ZTV and photomontages assume successful mitigation planting, which can never be guaranteed, but particularly in this case given the existence of the sewer easement and the restrictions on planting that imposes. The Appellant accepts that this will impact upon the mitigation planting[90], and although it asserts that adequate screening will still be possible, this is inevitably reduced from the assumed planting on which the Appellant's ZTV and photomontages are based[91].

46. Second, the Appellant has underestimated the numbers of visual receptors affected by the Proposal, namely recreational users of the Meon Valley, resulting in the underestimation of the geographic extent component of the LVIA assessment process, as Mr Croot explained[92].

The Impacts of the Proposed Development

47. The methodological failings in the Appellant's approach have caused it to underestimate the impacts of the Proposal. The real impacts, although unquestionably reduced from the Previous Scheme, remain significant, and not just at the level of the Site and its immediate surroundings (important though such impacts are in the context of a valued landscape). The photomontages

[87] Smith Appendices PL-2
[88] Mr Croot suggested at §5.4.4 of his Proof that it will take at least 15 years (and possibly more) for the mitigation planting to achieve the levels of screening required to arrive at the visibility indicated in the Appellant's ZTV and photomontages, and these in any event do not factor in the reduced planting required as a result of the sewer easement.
[89] Croot Proof Figure 3
[90] It is right to do so – see Croot Proof §§6.1.10 to 6.1.12 and ID.9
[91] See PL-20 (ID.10)
[92] Croot Proof §§5.4.6 to 5.4.8

show development including at year 15 from a range of locations, and Mr Smith accepted under cross examination that the Appellant was not proposing an impenetrable screen of planting. Given the prominent location of the Site on the crest of the valley side, there is a particular problem with "skylining" even once the mitigation planting matures[93].

48. In the appeal against the Previous Scheme, Inspector Stone expressed concern about the "creeping urbanisation of the area" and effects from "noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change"[94]. These concerns remain valid objections to the current Proposal[95]. As Mr Croot recognised, a lighting scheme could be required by condition, but it is unlikely to remove all harmful lighting effects and will not address the other urbanising influences inevitably associated with spread of housing into a previously natural environment. The openness and rurality of the site would be diminished, and would read like a sliver of open space within a settlement, rather than the open, rural landscape that currently exists.

49. As with the Previous Scheme, there would be a level of enhancement to the settlement edge as a result of the Proposal once landscaping has matured (i.e. in the long term), but (again as with the Previous Scheme) the benefit of this has been overestimated by the Appellant and would not outweigh the harm the Proposal would cause to the character and visual amenity of the Meon Valley[96].

Overall Conclusions on Landscape and Visual Impacts

50. For those reasons, the Proposal would cause both temporary and permanent harm to landscape character and visual amenity and would harm a valued landscape. Although the harms are reduced from those of the Previous Scheme, they remain significant in both the short to medium term and the long term (once the mitigation planting on which the Appellant is so heavily reliant matures). In the absence of a five-year supply, Policy DSP40(iii) requires such impacts to be

[93] Croot Proof §§6.1.6 to 6.1.8 and see, for example, the viewpoint 10 photomontages which clearly show a new skylining impact arising from the Proposal, considerably closer to the farmstead.
[94] CDJ.2 §26
[95] Croot Proof §6.1.9 and 6.1.13
[96] Croot Proof §6.1.15

"minimised" i.e., not entirely avoided, but reduced to acceptable levels[97]. The threshold of what is acceptable is obviously more stringent in valued landscapes. The Proposal fails to minimise its landscape and visual harms to acceptable levels, and these put it in breach not only of Policy DSP40(iii) but also Policies DSP6, CS14 and CS17, emerging Policies DS1, DS3 and HP4(c) and paragraphs 174(a) and (b) of the NPPF.

H. MAIN ISSUE 2: HERITAGE IMPACTS

Introduction

51. At the appeal into the Previous Scheme, it was common ground that there would be overall heritage harm, but disagreement as to the level. Mr Froneman suggested harm at the "bottom end of the spectrum of less than substantial harm"[98] while Ms Markham suggested harm in the middle of the less than substantial range[99]. Ms Markham's views were vindicated by Inspector Stone[100], and Mr Froneman indicated under cross examination that he accepts Inspector Stone's findings on heritage issues.

52. As Mr Froneman explained[101], the current Proposal is an attempt to respond to Inspector Stone's findings. It is important to emphasise at the outset that the Appellant, Council and Historic England all agree that there would be harm to the significance of the Grade II* listed farmhouse and barn. Mr Froneman's position was that there would be less than substantial harm in the short to medium term until the landscaping matured, at which point he suggested the effect would be neutral because the harm would be balanced out by the benefit in enhancing the settlement edge. Ms Markham's evidence (supported by the position of Historic England[102]) that the overall impact of the Proposal is to cause harm (at the lower – but certainly not the bottom – end of the less than substantial scale) in the long as well as short to medium term should be preferred.

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[97] Or levels that would not constitute unacceptable implications, to draw on the wording of DSP40(v).
[98] CDJ.2 §40 - Under XX, Mr Froneman quibbled with "bottom" but this is what Inspector Stone recorded as his position.
[99] CDJ.2 §40
[100] CDJ.2 §44
[101] Under XX
[102] CDB.11

53. If the Appellant were right that the Proposal is harmful to the significance of the Grade II* listed buildings in the short and medium term only (and neutral in the long term), its suggestion that as a consequence there is "no harm" to engage the NPPF paragraph 202 balance is extraordinary. Harm plus harm plus neutral clearly does not equal neutral. The Appellant's approach would allow a developer to apply for a harmful temporary permission, harming the significance of a listed building for 15 years, and to say that (as a result of its cessation at the end of that period) there is "no harm". The Appellant's approach is wrongheaded and would lead to a highly regrettable encouragement of temporary harms to heritage assets. Temporary harms must be weighed in the paragraph 202 balance, and given the appropriate weight.

Weight to Heritage Harms

54. In dealing with heritage harms, it is important to emphasise the stringency of the statutory and policy framework, addressed very fully by Ms Markham in section 4 of her Proof (none of this was controversial between the parties). As I noted in opening, the phrase "less than substantial" risks belying the importance of such harm. Any harm to the significance of listed buildings engages a statutory "strong presumption" against permission[103]. As the Court of Appeal made clear in ***Barnwell***, less than substantial harm does not equal a less than substantial objection to a proposal[104]; on the contrary, it is a matter of "considerable importance and weight"[105], a fortiori where, as here, one is dealing with highly graded heritage assets[106]. 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"[107]. As Grade II* listed buildings, the farmhouse and barn are within the top 8% of listed buildings in the country[108] and there are only 20 such assets in the Borough[109]. 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.

[103] CDK.31 at [23]
[104] CDK.31 at [29]
[105] CDK.31 at [22]
[106] CDK.31 at [28]
[107] NPPF §199
[108] Markham Proof §1.27
[109] And four at Grade I (Markham Proof §8.13).

Historic England's Position

55. Historic England provided a consultation response on the Application on 12th December 2019[110]. The response welcomed certain positive steps taken to try to address impacts, but was clear that the Application remained harmful. The overall finding was of "a minor degree of harm to the setting of the listed buildings, which in terms of the NPPF would fall well within the less than substantial level of harm".

56. Mr Froneman rightly accepted that this was a finding of overall harm in Historic England's consultation response. That is clear from the finding of "minor harm" when "taking the above considerations into account". And although the "Recommendation" in the letter stated that "Historic England has no objection to the application on heritage grounds", it is abundantly clear from the references to the section 66(1) duty and the section 38(6) test that Historic England was deferring the heritage and planning balances to the Council, not suggesting that there was no harm to be balanced.

57. Mr Froneman did, however, suggest that Historic England's consultation response failed to have regard to the heritage benefit from the enhancement to the existing settlement edge[111]. This was a surprising argument, given: (i) that he accepted[112] that the same Assistant Inspector (Andrew Scott) had taken into account that benefit in pre-application advice less than four months earlier[113]; (ii) that the consultation response expressly mentioned that Historic England had provided "pre-application comments"; and (iii) that the consultation response expressly stated that Historic England "support the overarching approach to the landscaping (subject to details), with the introduction of tree screening along the southern edge of the development to act as mitigation in softening the development's impact in wider views". On any fair reading, it is clear that Historic England did factor in the enhancement, but simply took a different view from Mr Froneman on the impacts in the long term once the landscaping had matured.

[110] CDB.11
[111] Froneman Proof §6.12
[112] Froneman Proof §6.13
[113] CDB.10

Ms Markham's Consultation Response at Application Stage

58. Mr Froneman's assertions that Ms Markham had failed to take into account the enhancement[114] in her consultation response of 28th January 2020[115] were even more surprising. Not only is it clear from the terms of her response that she had done so[116], but when Mr Froneman raised the issue in negotiations over the Heritage SOCG[117], Ms Markham made clear that she and the Council had taken the enhancement into account[118]. There is no good reason for Mr Froneman to have continued to run the point in his evidence, and it in any event it takes him nowhere because, despite refusing to abandon the point in cross examination, he accepted that Ms Markham had factored in the enhancement to the assessment in her Proof.

The History and Significance of the Farmstead and the Listed Buildings

59. There is a very substantial history to Great Posbrook, addressed fully in section 7 of Ms Markham's Proof[119]. Indeed, although no original buildings survive, there has been a farmstead at Great Posbrook since at least 1244[120] and there is a historic relationship with the nearby Titchfield Abbey (now a scheduled monument)[121] which adds to the significance of the farmstead and listed buildings[122].

60. The most recent chapter in the history is the enabling development scheme[123], which arose following disuse and dilapidation of the barn and farm buildings. This was sensitively done and was "highly commended" by the Fareham Society[124], but inevitably (given the need for new development for viability reasons) has had a negative impact on the significance of the listed

[114] Froneman Proof §6.15
[115] CDB.7
[116] CDB.7 page 5 bottom paragraph
[117] CDD.4
[118] CDD.4 at §4.7
[119] Mr Froneman did not take issue with any of this
[120] Markham Proof §7.11
[121] Markham Proof §§7.3 o 7.9
[122] Recognised by Inspector Stone (CDJ.2 at §36)
[123] Markham Proof §§7.39 o 7.46
[124] Markham Proof §7.45

buildings, as Inspector Stone recognised[125]. Nonetheless, as Mr Froneman accepted[126], the listed buildings remain of high significance and fully justify their Grade II* status.

61. Ms Markham assessed the significance of the farmstead itself at paragraphs 8.7 to 8.12 of her proof, applying the relevant farmsteads guidance to conclude that the farmstead qualifies as a "significant farmstead" of "special" or "particular" significance. Ms Markham was not challenged on this, and Mr Froneman did not conduct his own analysis, though under cross examination he quibbled slightly, suggesting that the main significance of the farmstead was derived from the significance of the listed buildings (which he nonetheless accepted had a group value). Parts of Mr Froneman's evidence also gave the impression that he felt that the farmstead had been reduced to "remnants"[127], though he was not consistent on this[128], and it goes too far. Under cross examination he rightly did not demur from Inspector Stone's finding that the "site is recognisable as a distinct farmstead"[129] and this is important to its significance and that of the listed buildings.

62. As for the significance of the listed buildings, and the contribution setting makes to that significance, Ms Markham addressed this in detail in section 8 of her Proof.

63. In his examination in chief, Mr Froneman suggested that absent the historic fabric and the immediate setting of the listed buildings within the farmstead, the listed buildings would have hardly any significance left. But as he recognised under cross examination, the wider setting must make an important contribution to significance, which is why harm at the middle of the less than substantial range was occasioned by the Previous Scheme.

64. So far as setting is concerned, it is common ground[130]:

[125] CDJ.2 §36
[126] Under XX
[127] Froneman Proof §3.54
[128] Compare Froneman Proof §4.4
[129] CDJ.2 §42 – see also Markham Proof §1.40
[130] CDD4 §§3.3 to 3.5

a. That the rural setting of the former farmstead contributes positively to the appreciation of the significance of the grade II* listed buildings;

b. That there is a historic functional relationship between the listed farmhouse and barn and the Site, which formed part of the estate farmed from Great Posbrook; and

c. That the Site forms part of the overall setting of the grade II* listed buildings and makes a positive contribution to the appreciation of their significance because of the historic functional relationship, as part of a broader rural setting and in separating it from the nearby settlement of Titchfield.

65. Under cross examination, Mr Froneman also did not demur from Inspector Stone's findings that 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" which "contributes to the overall significance of these assets" and that the "understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village [and] their setting within the wider agricultural and rural hinterland"[131]. This is important: the contribution of setting to significance in the north derives in part from the sense of separation from Titchfield, but also from the sense of an open rural hinterland. As Ms Markham noted[132], the open landscape is important to the understanding that this was originally an historic farmstead, and the appreciation of the significance of the listed buildings.

66. The setting is still very open, and this was also the case historically. Inspector Stone was right to find[133] that there is evidence of small wooded areas in the historic mapping, but these were freestanding isolated features and not so closely related to built development as proposed by the Appellant for both the Previous Scheme and the current[134].

[131] CDJ.2 §§36 and 63
[132] Markham Proof §8.25
[133] CDJ.2 §42
[134] See, for example, the map regressions in Ms Markham's and Mr Froneman's Appendices.

67. Setting is a broad concept embracing not only visual matters but also by other environmental matters (sounds, smells and the like) and the historical relationship between places[135]. Mr Froneman accepted this, but nonetheless placed huge stress on static views. However, as he accepted[136] there are views of the farmhouse to the north (which would be obscured by the planting under the Proposal) and, more than this, there is a kinetic experience[137], in traversing the area, of appreciating the farmstead from different locations surrounded by open agricultural fields.

68. Mr Froneman also suggested that that the "historic associations/functional relationships" between the farmstead and the land it farmed "exist at an abstract level that is removed from the way in which the listed buildings are experienced"[138] save the land to the south. Yet there is nothing "abstract" about the connection of the farmstead with the field immediately to the north. Of course, someone with no knowledge might not be certain that it was historically linked to the farmstead, but it would be a reasonable surmise, as it would be for land immediately to the south. Mr Froneman's underplaying of the historic functional connection was contrary to the approach of Inspector Stone, who recognised[139] the "historic functional connection with the adjoining open land" and did not limit this to the land to the south.

69. Overall, Mr Froneman underestimated the contribution of the Site to the significance of the listed buildings, which contributed to him underestimating the impacts of the Proposal.

Impacts of the Proposal

70. Unlike the Previous Scheme, the current Proposal would not entirely remove the separation of Great Posbrook from Titchfield, but the degree of separation would be very significantly reduced, as the Agreed Dimensions Plan shows[140]. The new development would be surrounded by dense screening vegetation (not the small pockets of natural woodland which are

[135] See the PPG section quoted on page 27 of Ms Markham's Proof
[136] Under XX
[137] As Inspector Stone recognised – see CDJ.2 at §63
[138] Froneman Proof §4.24-5
[139] CDJ.2 §42
[140] CDD.3a

characteristic of the historic pattern[141]) and the open rural hinterland which currently embraces the whole of the Site would be reduced to a narrow strip of land with currently open views impeded by planting. On any basis, this is not a "clear and substantive gap" as Mr Froneman wrongly suggested it was.

71. In fact, as Ms Markham suggested, the narrow gap would "read" as a public open space within a single settlement, rather than the historic open rural hinterland between a settlement and historic farmstead. Even in the long term, once the landscaping had matured, there would still be a sense of new housing and urban influences (lighting effects[142], noise, vehicle and people movements etc) along the road and footpaths, including not only those on site, but also in views from the east[143]. The sense of separation between Titchfield and Great Posbrook would therefore be obscured, the area would be urbanised, and the historic functional connection between the farmstead and its rural hinterland would be diminished. As a result, it would be harder to understand that Great Posbrook was originally a separate farmstead, surrounded by open farmland, and the appreciation of the significance of the listed buildings as being part of an ancient farmstead would be harmed[144].

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[141] CDJ.2 §42

[142] Despite Historic England having asked the Appellant for a lighting scheme, the Appellant has declined to produce one, but Ms Markham was clearly right to suggest that although a lighting scheme could be required by condition, it is unlikely to remove all harmful lighting effects (Proof §9.21).

[143] Mr Froneman's suggestion that, in the long term, a "clear sense of separation" would be maintained in views from the east is clearly at odds with the Year 15 photomontage for Viewpoint 10. The sense of separation and the sense of an open rural hinterland are both harmed in this view both from new built form and from the screening vegetation, which links Titchfield and Great Posbrook in a single mass. There is also a long term skylining impact which is clear from this Viewpoint including at Year 15.

[144] Mr Froneman suggested an inconsistency between the Council's approach to the Grade II* listed buildings and the locally listed buildings (Froneman Proof Footnote 18 on page 41). For the reasons set out by Ms Markham (Proof §§8.2, 8.49052 and 9.32-4) there is no inconsistency in the Council's position: in essence, the locally listed buildings are smaller, ancillary, inward-facing and have more contained and insular settings. There is therefore no inconsistency in the Council finding no harm to the locally listed buildings. The logic of Mr Froneman's position, however, is that, since he finds harm to the Grade II* listed buildings in the short to medium term, he should also find harm to the locally listed buildings over that period.

72. As Ms Markham explained[145], these harms would be further exacerbated were the narrow area of open land to the south of the proposed dwellings to be formally provided as Parks and Amenity Open Space[146], which would change the use of the land and further reinforce the sense that the open space was within a single settlement, rather than a gap of open rural hinterland separating a settlement from a historic farmstead.

73. It is common ground that the Proposal would give rise to one heritage benefit once the planting has established, namely the enhancement of the setting and appreciation of the significance of the Grade II* listed buildings through the improvement to the existing southern settlement boundary. As already noted, the Council's position is that this enhancement has diminished from the time of the last appeal through the softening of the existing edge. But, in any event, Mr Froneman fairly accepted under cross examination that the degree of enhancement would be minor and not present in the short to medium (as opposed to the long) term.

74. For those reasons, it is common ground that there would be harm to the significance of the Grade II* listed buildings in the short to medium term, and Ms Markham's view that there would also be harm in the long term (albeit at the lower – but certainly not bottom – end of the less than substantial scale) should be preferred. As she rightly suggested, given the statutory strong presumption against harm to heritage assets, this is a matter of great weight in the planning balance.

I. MAIN ISSUE 3: THE LOSS OF BEST AND MOST VERSATILE AGRICULTURAL LAND

75. The Proposal would result in the loss of 12.5ha of Grade 3a and 3b land[147] (of which the Grade 3a land is BMV land as defined in the Glossary to the NPPF). Regrettably, the Appellant's Agricultural Land Quality Considerations study[148] focusses exclusively on the redline area, and fails to appreciate the losses in the blue line land from taking the land out of agricultural use for habitats mitigation purposes. However, Mr Jupp has calculated that approximately 7.9ha of the total area to be lost is Grade 3a and thus BMV land[149].

[145] Markham Proof §9.16
[146] Jupp Proof §9.55
[147] Main SOCG (CDD.1 §4.13)
[148] CDAA.4
[149] Jupp Main Proof §9.31

76. This is far from an insignificant loss and, although it is common ground[150] 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, it is also common ground that it remains a matter to be weighed as a harm in the overall planning balance. As Mr Jupp explained, the loss of BMV land is in breach of Policies CS16 and DSP40(v) as well as emerging policy and paragraph 170(b) of the NPPF, and is a matter of limited, but certainly not insignificant weight[151].

77. The Appellant seeks[152] to reduce the significance of the loss of BMV land on the basis that such land is common in the Borough, but this does not reduce the harm from its removal (just as the fact that housing could go elsewhere does not reduce the weight to be attached to the benefit of its provision). The Appellant also suggests that the loss of BMV land would not be an "unacceptable" environmental implication for the purposes of Policy DSP40(v)[153]. But that is contrary to the approach of Inspector Stone in viewing the smaller loss then at issue of 4.1ha[154] of BMV land as breaching DSP40[155] [156].

78. For those reasons, the loss of BMV land may be a matter of limited weight, but it is certainly not a matter of insignificant weight. On its own, it puts the Proposal in breach of the development plan[157]. And although of limited weight, it must be fully factored into the planning balance and could, depending on your findings on other issues, tip that balance (although the Council's position is, of course, that as with the Previous Scheme, the planning balance falls against it even without including the harm from loss of BMV land).

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[150] Main SOCG (CDD.1) §4.13
[151] Jupp Proof §§9.32 to 9.36
[152] CDAA.4 and Brown Proof §5.29
[153] Main SOCG (CDD.1) §4.13 and Brown Proof §5.64
[154] CDJ.2 §46 – Contrary to Mr Brown's position, it is clear from Inspector Stone's decision that he was considering a loss of only 4.1ha. Whether he ought to have considered a greater level of loss from other elements of the Previous Scheme, it is clear that he did not do so.
[155] CDJ.2 §66
[156] As Mr Jupp noted (Proof §9.35) the Inspector in the Land East of Newgate Lane East Decision (CDJ.17) did find that the loss of 76% (§34) of a 4.1ha site (§3) made up of Grade 3a BMV land (§34) would not represent an "unacceptable" environmental implication in terms of DSP40(v) (§34), but this was for a smaller loss than under either the Previous Scheme or (a fortiori) the current Proposal.
[157] Jupp Proof §9.36

J. MAIN ISSUE 4: WHETHER REQUIRED MITIGATION IS SECURED

79. On main issue 4, the issues relating to European Sites, affordable housing, education and public rights of way have now been resolved between the parties, subject to completion and execution of the unilateral undertakings.

80. On public open space, however, a fundamental issue remains. The approach to public open space in the final version of the main unilateral undertaking is to secure provision in Schedule 7 subject to a blue-pencil clause (in clause 5.2) which would remove the requirement unless you unequivocally and clearly state in your decision that the provision of open space is "required". What Schedule 7 provides for is simply an area of "grassland and planting" (see Schedule 6) to be made available for public access. Unlike the previous draft of the unilateral[158] there is no provision for a scheme of works or transfer of the public open space to the Council.

81. As Mr Jupp demonstrated[159], contrary to the Appellant's position, public open space in the form of Parks and Amenity Open Space is required. Mr Brown's contrary suggestion involved a misreading of the Open Space Study 2018[160], paragraph 5.2 of which is clear that Table 8 (not Tables 10 or 14[161]) should be used in the decision-taking context. Table 8 shows a clear deficit of -1.40ha. And although Parks and Amenity Open Space provision in Titchfield has improved as a result of the Titchfield Meadows Country Park (or Abbey Meadows)[162], this does not help the Appellant given the significant distance from the Site[163] along routes that are not particularly suitable for pedestrians[164]. Moreover, so far as Parks and Amenity Open Space closer to the Site is concerned, the Open Space Study 2018 draws specific attention to the poor quality of the Bellfield site immediately to the north of the Site[165] (which would not be improved by the Proposal).

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[158] ID7a
[159] Jupp Proof §§9.40 to 9.57
[160] CDE.7
[161] On which Mr Brown relied – Proof §5.79-80
[162] CDE.7 §7.11 and 7.17 and Table 14
[163] Jupp Proof §9.53
[164] As Mr Jupp explained (EiC and XX), the 23 minute route shown in the plan at paragraph 9.53 of his Proof involves navigating a long section on St Margaret's Road without a footway. And for both routes, pedestrians have to cross the Southampton Road dual carriageway.
[165] CDE.7 §7.16

82. Parks and Amenity Open Space is, therefore, "required", but there is insufficient space for this to be provided within the 1.61ha area at the north of the Site. The Appellant's new approach of proposing public open space within the redline area to the south of the proposed houses in the gap immediately to the north of Great Posbrook[166] raises a number of concerns. First, it would cause additional heritage harm, as Ms Markham explained[167]. Second, it may give rise to landscape concerns[168]. Third, the location of this area, screened away from the houses, is unsuitable in planning and design[169] terms, as Mr Jupp explained[170].

83. Parks and Amenity Open Space should not, therefore, be provided in the area proposed (and no other suitable area has been proposed or secured). Moreover, as already noted, the public open space now proposed by the Appellant is simply a "grassland and planting area" made available for public access. It would therefore be inadequate, having regard to the definition of Parks and Amenity Open Space in paragraph C.2 of the Planning Obligations SPD[171].

84. For those reasons, Parks and Amenity Open Space is "required", but the approach under the Appellant's main unilateral undertaking would be harmful and also fail to provide adequate Parks and Amenity Open Space. This is a significant negative in the planning balance.

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[166] Brown Proof §§5.65 and 5.73 and see the Indicative Parks and Amenity Open Space Plan appended to the main unilateral undertaking (the indicative area on that plan includes land to the east of the site adjoining the Bird Conservation Area, but in reality public open space is unlikely to be possible in that area given the landscaping and habitats constraints).

[167] See paragraph 72 above

[168] Mr Croot's acceptance that such concerns might be overcome in answer to one of your questions preceded the Appellant's approach to open space in the final unilateral undertaking, and because no proposal was before him, he was not able to give a view as to whether provision of public open space as now proposed might be acceptable or have knock-on effects on other impacts.

[169] The NPPF 2021 (supported by the National Design Guide – CDH.43) places considerable stress on the importance of good design (see, for example, §§110(c), 129 and 134)

[170] See pages 30 to 32 of the National Design Guide (CDH.43), to which Mr Jupp referred (in particular the bullets at the top of page 32).

[171] CDE.5

K. BENEFITS OF THE PROPOSED DEVELOPMENT

85. In recommending refusal, Officers (and in accepting that recommendation, Members) had proper regard to the benefits of the Proposal[172] and Mr Jupp very fairly did the same (section 10 of his Proof).

86. The Proposal would make meaningful (albeit limited, given the relatively small number of dwellings) contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for affordable housing supply. Taken together, Mr Jupp attached substantial weight to these[173].

87. There are associated economic benefits as a result of the construction process, including the potential creation of new jobs and increased local expenditure and there are also economic benefits from expenditure from future occupants of the proposed houses themselves. Mr Jupp attached moderate weight to these[174].

88. In terms of the asserted environmental benefits, Biodiversity Net Gain is an expectation of all schemes and so is not a significant benefit, and other environmental measures are mitigation for adverse impacts that would otherwise arise, rather than benefits. Mr Jupp therefore attached limited weight to the environmental benefits[175]. As for the sustainability of the Appeal Site in locational terms[176], that is again an expectation of policy rather than a benefit.

89. Overall, Mr Jupp rightly viewed the benefits of the Appeal Proposal as significant[177] but they are obviously much reduced in comparison with the previous scheme.

L. PLANNING BALANCE

90. In the light of all of the evidence you have heard, the Council maintains its position that planning permission should be refused. In this section, as Mr Jupp did in his evidence, I proceed on the

[172] CDC.1 at §8.79
[173] Jupp Proof §10.8
[174] Jupp Proof §10.7
[175] Jupp Proof §10.9
[176] Main SOCG (CDD.1) §2.2
[177] Proof §13.1.7

likely assumption that unilateral undertakings 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 obligations are not secured, the conclusion that planning permission should be refused will be further reinforced. And if the habitats obligations are not secured[178] (so as to provide you, as competent authority, with certainty beyond a reasonable scientific doubt[179] 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 is no suggestion that the derogation tests under Regulation 64 of the Conservation of Habitats and Species Regulations 2017 could be met).

91. 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 numerous 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.

92. As a result of the absence of a five-year housing land supply (and assuming the habitats obligations are secured), paragraph 11(d) of the NPPF is engaged.

93. Turning to the first limb of paragraph 11(d), Mr Jupp rightly considered 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***[180] and ***Stonehenge***[181] cases, he considered 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

[178] Or if you disagree with the parties as to the avoidance of an adverse effect on the integrity of any European Sites
[179] The requisite standard – see ***Mynydd*** (CDK.9) at [8(5)-(6)] and ***An Taisce*** (CDK.14) at [17]-[18]
[180] CDK.21
[181] CDK.29

as the farmhouse and barn). As I suggested in opening, this alternatives point is powerful: there is no good reason for putting an ordinary housing proposal in this location unless (which is not the case here[182]) harms to heritage and landscape can be avoided. Mr Brown did not demur under cross examination from the proposition that alternatives could be considered, nor from the proposition that many such alternatives would not be within the setting of Grade II* assets, given their rarity. Housing can come forward on other, less sensitive, sites through application of DSP40 and, in the near future (Autumn/Winter 2022[183]), on a plan-led approach following adoption of the Emerging Local Plan. Mr Jupp then went 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.

94. 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 explained, 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.

95. As explained above, the harms to character and appearance in the context of a valued landscape, to the Grade II* listed buildings[184], from the loss of BMV land, and from the harmful and inadequate public open space provision are very significant. To these must be added the policy harm from the breaches of the strategy and policies of the development plan. The policy harm is itself a fundamental issue under a plan-led system, but this is something never adequately recognised under the Appellant's case or evidence. The development plan has a primacy given by both statute and policy and this cannot be displaced or distorted by other considerations (see

[182] Even the Appellant accepts that there will be harms to landscape and heritage in the short to medium term (XX of Smith and Froneman)

[183] See Jupp Proof §5.30 and the Council's LDS (CDF.6)

[184] As Mr Jupp explained in the footnote at page 104 of his Proof, to get to the tilted balance, the heritage harms must have been viewed as being (contrary to the Council's position) outweighed by the public benefits. However, that does not mean that the heritage harms are ignored in the tilted balance – otherwise, the tilted balance would be distorted by factoring in all the "public benefits" while ignoring harms. In applying the tilted balance, all harms (including the heritage harms) and all benefits (including the public benefits) must be included.

SSCLG v Hopkins Homes Ltd [2017] 1 WLR 1865 at [21])[185]. Moreover, the breaches of the strategy and policies of the development plan (and indeed the Emerging Local Plan) mean that the Proposal should be seen as "undermining the credibility" of the plans and "inimical to the plan-led system itself", which not only offends the primacy given to the development plan by statute, but is also "contrary to a basic policy of the NPPF" and a highly important "adverse impact" within paragraph 11(d)(ii) (see ***Gladman Developments Ltd v SSHCLG*** [2021] EWCA Civ 104 at [56][186]).

96. For all of those reasons, planning permission should be refused whether or not the tilted balance falls to be applied. The Proposal is less harmful that the Previous Scheme, but also significantly less beneficial, and the scales still point strongly towards refusal.

M. OVERALL CONCLUSIONS

97. For the reasons given above, I invite you to dismiss the Appeal.

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16th December 2021

[185] CDK.4. See also §12 of the NPPF.

[186] CDK.18