IN THE MATTER OF LAND TO THE SOUTH OF FUNTLEY ROAD, FAREHAM

AND IN THE MATTER OF APPEALS
BY RESIDE DEVELOPMENTS LTD AND ATHERFOLD INVESTMENTS LTD
UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PINS REFS: APP/A1720/W/21/3283643 & 3284532
LPA REFS: P/20/1168/OA & P/20/1166/CU

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 two proposals ("the Proposals") by Reside Developments Ltd and Atherfold Investments Ltd ("the Appellants") for developments on contiguous land parcels at land to the south of Funtley Road ("the Appeal Sites").

2. The first appeal ("Appeal 1"[2]) is for an outline residential scheme for up to 125 dwellings including 6 self or custom build plots and a community building or local shop, plus associated development following demolition of existing buildings. The second ("Appeal 2"[3]) is for a change of use of land to a community park, also following demolition of existing buildings. The Appeal 2 proposal is not intended to be freestanding[4], but secured as a benefit of the Appeal 1 scheme through the Section 106[5].

[1] https://moderngov.fareham.gov.uk/ieListDocuments.aspx?CId=363&MId=4098&Ver=4
[2] APP/A1720/W/21/3283643
[3] APP/A1720/W/21/3284532
[4] Main SOCG (CDD.1) §3.3
[5] Item H. The Section 106 was originally offered as a Planning Obligation by Agreement and Unilateral Undertaking, but the final version is solely a Unilateral Undertaking.

3. As you have heard, the Council has no objection to the grant of permission on the Appeal 2 scheme[6] but remains fundamentally opposed to Appeal 1, which would have been refused for 8 reasons had it not already been appealed for non-determination[7]. Six of these (as well as a further issue concerning habitats impacts to the New Forest which has arisen since the resolution was made) have now been resolved subject to execution of the Section 106. However, the first two reasons remain, and they provide a firm basis for dismissing Appeal 1.

4. The Appeal 1 proposal is a clear attempt by the Appellants to push the envelope past breaking point. They proceed on the assumption that, because a scheme for 55 units has been permitted on part of the Appeal 1 site[8] and supported in emerging allocation HA10[9], the Council has somehow sold the pass and that more than double the number of dwellings must therefore be acceptable. The Appellants appear to consider that the "principle" of residential development has been established in some general sense, but the principle is for limited residential development in the lower reaches of the site only.

5. The approach of the Appellants is exemplified in their position on locational sustainability. The relevant guidance is highly inconvenient to them, since application of it reveals the limited accessibility of the location. Perhaps for that reason, they have focussed primarily on distances, assuming that if some services are within a 2km walking distance or a 5km cycling distance, this must be acceptable, but that is <u>not</u> what the guidance suggests. They also proceed on the basis that the granting of permission for the 55-unit scheme and the emerging HA10 allocation have settled the issue of locational sustainability generally, but this confuses the proposal with the site. On the 55-unit application, Officers found the location to be "*relatively poor in terms of its accessibility*"[10] but considered that the measures proposed would address accessibility issues

[6] The Appeal 2 proposal is slightly smaller than the previous community park scheme. The reduction is required to accommodate the expanded Appeal 1 site, and as a result the Appeal 2 proposal is a little less beneficial than the previous scheme, but the difference is marginal and Mr Jupp was therefore content to be generous to the Appellants and to treat them as equal. The Council has no objection to the Appeal 2 proposal (Main SOCG (CDD.1) §3.4; Jupp Proof §1.7); and it resolved on 2 November 2021 that, had it not already been appealed for non-determination, it would have granted conditional permission (FBC.6 page 7).

[7] FBC.6 pages 6-7

[8] CDH.1 (and see CDH.2 for the associated community park permission)

[9] CDF.5 page 70

[10] CDH.3 at page 17

sufficiently for permission to be granted on that proposal (I emphasise sufficiently – even with its mitigation the 55-unit scheme is clearly not highly accessible). However, it does not follow from the Council's conclusions on the 55-unit scheme that a proposal for more than double the number of dwellings is accessible since, as Mr Jupp noted, the assessment of whether a proposal is sustainably located must be informed by its scale[11]. A site that is sufficiently accessible for one house might not be accessible for more, and that principle is equally applicable when considering a more than doubling of the 55-unit fallback.

6. The approach of the Appellants is also exemplified in their position on landscape and visual issues. The 55-unit scheme has established that 55 dwellings can come forward (following the clear design and layout parameters agreed with the Council) without unacceptable landscape and visual harms, not that more than twice that number, more densely packed on a 41% larger[12] developable area extending 30m further south[13] can do so. Contrary to Mr Simons' suggestion in cross examination of Mr Dudley, the differences between the two schemes are not "marginal" since they tip the landscape, visual and design impacts from acceptable to unacceptable. Indeed, even Mr Rummey accepted[14] that residential development of the Appeal sites would be unacceptable in landscape and visual terms if it extended too far south: his suggestion was that the tipping point came at above the 29/30m contour[15], and so on the Appellants' own evidence, the Appeal 1 scheme is on the cusp of unacceptability in landscape and visual terms. In reality, however, as Mr Dudley has shown, the Appeal 1 Scheme is already beyond the tipping point and would cause significant landscape and visual harms, which have not been minimised, and which would harm a valued landscape. Moreover, as Mr Russell-Vick has shown, the design is fundamentally flawed on a number of levels, including: the approach to the edges; the design layout in respect of the view corridors; and the unsympathetic approach to local character.

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[11] Jupp Proof §9.56

[12] The Council has calculated that the developable area increases from 2.48ha under the 55-unit scheme (see Russell-Vick Appendix D) to 3.5ha under the Appeal 1 scheme (see CDB.19 page 2), an increase of 41%. Neither Mr Rummey nor Mr Burden demurred from this under cross examination. It is clearly a sizeable increase, and not "*slightly extended*" as Mr Rummey suggested in §1.13(iv) of his Rebuttal.

[13] Dudley Proof §2.23

[14] Under XX

[15] Under XX

7. I explore these issues further below, after first turning to matters of approach.

B. PROPER APPROACH

8. Mr Jupp has addressed the proper approach to determining these Appeals in detail in his evidence. In Closing, I draw particular attention to three points.

9. First, it is common ground: that the 55-unit scheme and its associated community park forms a fallback position (or consented baseline, to use Mr Simons' phrase); that there is no reason for it not to come forward if the Appeal 1 scheme is refused; and that the harms and benefits must therefore be judged by comparison with that fallback[16]. So, for example, all units from the 55-unit scheme are deliverable within five years (and are included in the Council's current Five Year Housing Land Supply Position statement[17]) and so the contribution to the 5-year supply from the Appeal 1 proposal is 70 units, not 125, as Mr Burden accepted[18].

10. This point applies generally to the benefits, and also to the harms. However, so far as the harms are concerned, there are tipping points into unacceptability and one cannot get round these by making applications in stages. So, for example, as Mr Rummey and Mr Burden both accepted[19], if the landscape and visual impacts of moving from nothing to the 125-unit scheme would be unacceptable, the impacts of the 125-unit scheme could not be rendered acceptable through first applying for an acceptable 55-unit scheme. That would amount to a developer's charter which would circumvent planning protections and allow progressively increased harms through multiple applications. The 55-unit permission is not, therefore, a stepping stone to allow greater harms than would otherwise be permitted.

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[16] That is clearly appropriate, since there is not merely a "*real prospect*" of the 55-unit scheme coming forward if permission is refused on the Appeal 1 scheme (the test for being able to take a fallback into account at all: see ***R (Mansell) v Tonbridge and Malling BC*** [2019] PTSR 1452), but an overwhelming likelihood. It is therefore appropriate to simply compare the two schemes. You could alternatively consider the Appeal 1 scheme in the absence of the fallback and then have a separate comparison with the fallback, but the end result would be the same.

[17] FBC.28

[18] Under XX

[19] Under XX

11. Second, the Welborne Garden Village application for a new community of up to 6,000 homes on a site to the northeast of the Appeal sites was granted outline permission on 23rd July 2021, and so is also part of the consented baseline. The Appellants have sought to make great play of this, both in landscape and visual terms and in terms of locational sustainability, but its impacts should not be overstated, as explained below. Moreover, as Mr Jupp explained[20] the Highstead Area of Welborne (the closest area to the Appeal site - to the south and west of Mr Dudley's viewpoints 7 and 8[21]) is not likely to be built out until 2032 to 2042 and so is only relevant when considering longer term impacts.

12. Third, the Appeal 1 proposal is for "up to 125" dwellings (plus other development). Mr Burden considered that this gives flexibility to the Council to insist on a smaller number of dwellings at reserved matters stage if necessary to ensure compliance with development management policy[22]. The Council consider this to be contrary to Court of Appeal authority[23]. The principle of anything up to 125 dwellings would be established if outline permission were to be granted, and that principle could not be revisited at reserved matters stage. However, whether the Council might in certain circumstance be able to insist on lower numbers is not something you have to decide since it is common ground[24] that if 125 dwellings is more than you consider can be accommodated without unacceptable harms (as the Council considers to be the case) outline permission must therefore be refused.

C. POLICY FRAMEWORK

The Development Plan

13. 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[25] comprises[26]:

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[20] Jupp XIC and see ID.15 (noting Mr Jupp's oral evidence about the 3 year delay to the timetable shown on the sequencing plans)
[21] See Rummey Rebuttal Appendix 2 Plan 01
[22] Proof §3.84
[23] ***R (Harvey) v Mendip District Council*** [2017] EWCA Civ 1784 at §41 *per* Sales LJ (ID.08 – and see also ID.07 and ID.09)
[24] Accepted by Mr Burden under XX
[25] The Hampshire Minerals and Waste Plan is also part of the development plan, but is not relevant to this Appeal
[26] Main SOCG (CDD.1) §4.2

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").

14. It is common ground that the Welborne Plan is not applicable to the determination of the Appeals, save for its relevance to the assessment of deliverable housing supply from Welborne[27].

15. A range of policies from the Core Strategy and DSP are agreed to be relevant to Appeal 1[28], and the relevant provisions of these are helpfully summarised in §§5.4 to 5.21 of Mr Jupp's Proof.

16. Chief among them is Policy DSP40[29], 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 very substantial weight in the planning balance and conflict with it should be a matter of the greatest consideration[30]. Anything less would fail to respect the primacy given by statute to the development plan[31]. Mr Jupp addressed the relevant decisions in his evidence, save the very recent 84 Fareham Park Road decision (which post-dated his evidence), in which the Inspector (consistent with other appeal decisions) gave "*very significant weight*"[32] to conflict with DSP40. As Mr Jupp noted, there have been findings in certain 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 full weight being accorded to those criteria[33]. However, as Mr Jupp explained, this is not

[27] Main SOCG (CDD.1) §4.2
[28] Main SOCG (CDD.1) §§4.4 and 4.5
[29] 5YHLS SOCG (CDD.2) §2.4
[30] Jupp Proof §6.39
[31] CDK.4 ***Hopkins Homes v SSCLG*** [2017] 1 WLR 1865 at [21] *per* Lord Carnwath
[32] ID.19 at §32
[33] CDJ.4 at §110; CDJ.6 at §46

borne out by the evidence: DSP40 was applied in granting the 55-unit scheme in this case, and has been used by the Council and Inspectors on numerous other applications and appeals including those on the Warsash Cluster, at Land East of Down End Road[34], at Land East of Crofton Cemetery[35], and at Land South of Romsey Avenue[36]. Moreover, even if it were right to treat criteria (ii) and (iii) as unduly restrictive for ordinary landscapes, such an approach should not be adopted for valued landscapes, where the NPPF requires protection and enhancement.

17. Contrary to all of the decisions on DSP40, Mr Burden gave "limited weight" to it. He sought to rely on the Crofton Cemetery decision[37] but that was a decision in which DSP40 was found to have been complied with, and Inspector Jordan therefore had to go no further than finding that compliance with DSP40 outweighed the conflict with CS2, CS6, CS14 and DSP6 in that case. The Crofton Cemetery decision therefore provides no support for Mr Burden's suggestion of "limited weight" to DSP40, and Mr Jupp's position of very substantial weight should be preferred.

18. Policy DSP40 is fundamental, but other policies are also relevant, as Mr Jupp described. As a result of the out of date settlement boundaries, housing delivery test results, and absence of a five-year supply, policies CS2, CS6 and DSP6 are out of date[38] and the weight to be attributable to conflicts with policy CS14 is reduced. Mr Jupp accepted that the parts of these policies specifically relating to the provision or location of new housing should receive limited weight due to the shortfall in five-year housing land supply[39]. 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 Sites are (on the Council's case) within a valued landscape, the landscape protection elements of those policies (consistent as they are with the NPPF[40]) should attract significant weight, in line with Inspector Stone's decision on the Posbrook Lane decision[41], rather than the limited/little weight attributed in the two Newgate

[34] CDJ.7
[35] FBC.27
[36] ID.01
[37] FBC.27
[38] Jupp Proof §6.40
[39] *Ibid.*
[40] There is no dispute about this
[41] CDJ.2 at §67

Lane decisions, which did not involve valued landscapes[42]. The remainder of the relevant policies (notably CS5[43] and CS17[44]) are fully consistent with the NPPF, are not rendered out of date by the absence of a five-year supply or otherwise, and should attract full weight[45].

19. Policy DSP40 provides a "contingency position" with "further flexibility" in circumstances in which (as here) a five-year supply cannot be demonstrated[46]. As such, its criteria are in certain respects less restrictive than other policies within the development plan. So, for example, the requirement to "minimise" any adverse impact on the countryside under DSP40(iii) contemplates some impacts, but requires that they be reduced to acceptable levels[47] (the threshold of acceptability being obviously more stringent in more sensitive landscapes, *a fortiori* in valued landscapes). But DSP40 does not provide a general relaxation of standards: the additional flexibility is circumscribed according to its terms, allowing the development plan to continue to exert decisive influence on the proposals which come forward where a five-year supply cannot be demonstrated.

20. Mr Burden suggested[48] that if the Appeal 1 proposal complies with DSP40, it must be regarded as complying with the development plan overall. That is not inevitable. 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[49]. Indeed, DSP40 itself indicates that (in the absence of a 5YHLS) additional housing sites "may be" (not "will be") permitted where they meet criteria (i) to (v), contemplating exceptions. If all relevant planning considerations feed into DSP40 in a particular case, as Mr Jupp accepted was likely in connection with putative reasons for refusal (a) and (b), it may be that a proposal that complies with DSP40 will comply with the development plan overall, but DSP40 does not address everything, so the position will depend on the individual

[42] CDJ.4 at §106 and CDJ.6 at §45
[43] On which see Land East of Downend Road (CDJ.1) at §97 and Jupp Proof §6.14
[44] On which see Land East of Newgate Lane (CDJ.6) at §46 and Jupp Proof §6.27
[45] Jupp Proof §6.41
[46] CDE.2 §5.163
[47] Agreed by Rummey and Burden under XX. To put it another way (drawing on the wording of DSP40(v)) reduced to levels that would not constitute unacceptable implications.
[48] Proof §3.15
[49] See ***R v Rochdale MBC ex parte Milne*** [2000] EWHC 650 (Admin) (CDK.12)

case. All of this is, of course, 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.

The Emerging Local Plan

Introduction

21. 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[50] ("LDS"). Under the LDS the Emerging Local Plan is expected to be adopted in Autumn/Winter 2022 and, consistent with this, the examination hearings are scheduled from 8th March to 5th April 2022[51].

Weight to be Attached to the Emerging Local Plan

22. 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"[52] should currently be attached to the Emerging Local Plan. The "very limited weight"[53] suggested by Mr Burden is clearly too low[54]. However, on either position, it is important to consider its policies, as Mr Jupp did.

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[50] CDF.6 at §3.8 Table 1

[51] https://www.fareham.gov.uk/planning/local_plan/examination/examinationlibrary.aspx

[52] Jupp Proof §5.27 and Main SOCG (CDD.1) §4.10

[53] Burden Proof §4.87

[54] At §4.82-3 of his Proof Mr Burden suggested that the examining Inspector raised "concerns" which had not been responded to by the Council. That is not correct. The Inspector's letter of 17th November 2021 raised "initial questions and requests for further information and clarification". The Council responded in December 2021 and the examination sessions were then arranged. At this stage, the examining Inspector's final views are unknown, but Mr Burden's pessimism as to the Plan's prospects of passing its examination is not warranted on the evidence.

Treatment of the Appeal Sites under the Emerging Local Plan

23. The majority of the Appeal 1 site comes within the emerging HA10 allocation under the Emerging Local Plan, but the redline area extends further to the south[55] into land designated as countryside (DS1), strategic gap (DS2), area of special landscape quality (DS3), and public open space (NE10) under the Emerging Local Plan[56], with built form jutting right up against the HA10 allocation boundary. The Appeal 2 Site is also countryside, strategic gap, ASLQ and (in part) open space under the Emerging Local Plan.

24. The Appellants appeared to consider[57] that the HA10 allocation had been arrived at without consideration of the capacity issues or sensitivities of the site, but that is clearly not so. The 2017 draft of the Emerging Local Plan[58] addressed such issues clearly on page 156[59] and a detailed Draft Development Framework Plan was included at page 231 (which includes, among other things, a diagonal western view corridor). The need for development to be *"small scale and sensitively integrated within the existing vegetation structure to avoid adverse visual impacts"* was also clearly recognised in the 2020 SHELAA[60].

25. Mr Burden rather boldly suggested that the Appeal 1 scheme *"broadly meets the site-specific requirements of draft policy HA10"*[61] but that is plainly not the case:

    a. First, as accepted by Mr Burden[62], the more than doubling of the indicative site capacity puts it in breach of criterion (a).

[55] See Rummey Main Proof Appendices 5.2 and 5.3; Rebuttal Appendix 1
[56] Jupp Proof §2.11
[57] Mr Simons' XX of Mr Jupp
[58] CDF.1
[59] "*In light of the landscape setting, this development allocation is required to take a looser, less dense approach, applying a density of around 20 dwellings per hectare (dph). In light of the rural setting, significant natural landscaping should be incorporated, so that proposals are assimilated into the landscape. Part of this assimilation includes the incorporation of view corridors, between Funtley Road and the open space south of the site, which are required to maintain visual and physical connections through the site.*"
[60] ID.06
[61] Burden Proof §1.23
[62] Under XX

b. Second, the inclusion of buildings up to 2.5 storeys[63] puts it in breach of criterion (c). Surprisingly, Mr Burden did not accept a breach here. But 2.5 storeys does not mean 2 storeys, and Mr Burden's suggestion[64] that the "2.5 storey key buildings"[65] would be of the same height as the 2 storey non-key buildings would lead to cramped key buildings.

c. Third, the inappropriate approach to landscape and view corridors puts it in breach of criterion (f). Mr Burden suggested[66] that provision of any view corridors (whether appropriately sized, orientated and located or not) is sufficient to comply with the criterion, but that fails to construe it sensibly. The requirement for view corridors is to "*take account of the site's landscape context*" and view corridors are therefore required to be appropriate to satisfy the criterion.

26. Moreover, contrary to Mr Burden's view, built form right up to the southern redline (with additional landscaping and open space outside the redline) is clearly not intended by the policy. Indeed the SHELAA approach to calculating development potential on sites over 0.5ha expressly factors in that allocation areas will *include* infrastructure, internal access roads, landscaping and open space needs[67].

D. <u>5-YEAR HOUSING LAND SUPPLY AND AFFORDABLE AND SELF BUILD SUPPLY</u>

27. Since the Appeal 1 Proposal is residential-led, it is important to understand the housing land supply position in the Borough. Happily, as set out in the Five Year Housing Land Supply Statement of Common Ground[68], the parties have reached considerable agreement on housing issues, as a result of which oral evidence has not been required. In particular:

[63] See CDA.20
[64] Under XX
[65] As shown on the Height Parameters Plan CDA.20
[66] Under XX
[67] ID.06 at §4.9
[68] CDD.2

a. It is agreed that the 2021 Housing Delivery Test results published on 24th January 2022 confirm that Fareham achieved 62% of its housing target[69].

b. It is agreed that the Council is unable to demonstrate a five-year supply of housing for the period 1st January 2022 to 31st December 2026[70]. The Council considers the 5YHLS position to be 4.31 years while the Appellant considers it to be 1.62 years[71].

c. 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[72]; and as such (on principles established by the Court of Appeal in ***Hallam Land Management Ltd v SSCLG*** [2018] EWCA Civ 1808[73]) it is not considered necessary for you to conclude on the precise extent of the shortfall[74].

28. The Council does not shy away from the HDT position, or its current inability to demonstrate a 5YHLS, but it is important to understand the context. As Mr Jupp explained, a major impediment to housing delivery has been the issue of nitrates impacts, but such issues have now been resolved[75]. A second impediment has been delay in connection with Welborne Garden Village, but as already noted, outline permission was granted for that scheme on 23rd July 2021. A third impediment has been delay in the preparation of the Emerging Local Plan, but again as already noted, the Emerging Local Plan is expected to be adopted in Autumn/Winter 2022[76]. Therefore, although the Council accepts that it cannot currently demonstrate a 5YHLS, the position is likely to continue to improve including, in the near future, through plan-led delivery on adoption of the Emerging Local Plan.

[69] CDD.2 §3.1
[70] CDD.2 §2.1
[71] CDD.2 §§5.1 and 5.2
[72] CDD.2 §6.3
[73] CDK.8
[74] CDD.2 §6.3
[75] Jupp Proof §§7.15 to 7.31
[76] CDF.6 at §3.8 Table 1

29. The Council also accepts that there is a significant unmet affordable need within the Borough[77], as well as a significant unmet need for self and custom build homes[78]. As Mr Jupp explained in his evidence[79], the Council is taking steps to try to remedy the shortfall in affordable housing supply, and although the Welborne requirement is currently for 10% affordable housing, that is subject to a viability review mechanism, and the developer has indicated that it remains its target to provide as close to 30% affordable housing as possible across the lifetime of the scheme. So far as self and custom build supply is concerned, the Emerging Local Plan contains a bespoke policy HP9 on the issue as well as an allocation (HA33).

E. INTRODUCTION TO MAIN ISSUES

30. In your post-Case Management Conference Note of 14th December 2021, you characterised the main issues as follows:

    1. Whether or not the proposed development would be in a suitable location, with particular regard to the spatial strategy for the location of new housing and the accessibility of services and facilities for future occupiers; and

    2. The effect the proposed development would have on the character and appearance of the area, with particular regard to whether or not it would enable a detailed scheme to come forward that would reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside.

31. I address each of these in turn.

[77] Main SOCG (CDD.1) Section 5 line 9
[78] Jupp XIC
[79] Jupp Proof §§7.38 to 7.51

F. MAIN ISSUE 1: WHETHER OR NOT THE PROPOSED DEVELOPMENT WOULD BE IN A SUITABLE LOCATION, WITH PARTICULAR REGARD TO THE SPATIAL STRATEGY FOR THE LOCATION OF NEW HOUSING AND THE ACCESSIBILITY OF SERVICES AND FACILITIES FOR FUTURE OCCUPIERS

Accessibility

Introduction

32. The issue under reason for refusal (b) is whether, and the extent to which, the Appeal 1 proposal would be "*sustainably located*" i.e. accessible by non-car modes. Even the Appellants accept that mitigation is required in this regard[80], and this implicitly recognises the limited accessibility of the site for a housing development of this scale. The Appellants suggest that, with mitigation secured, accessibility concerns are fully resolved, but as set out below, their approach is flawed on a number of bases. Mr Jupp's evidence on this issue should be preferred[81], and it demonstrates that the Appeal 1 proposal is not sustainably located, which is a harm of moderate weight in the planning balance.

Planning History

33. The Appellants have sought to suggest that the locational sustainability of the "site" has been established by its history, but as already noted, that fails to understand the distinction between the site and the proposal. The Council has been consistent in its view that the site is relatively poor in terms of its accessibility, but that mitigation could render a proposal for up to 55 units sufficiently accessible to be granted permission.

34. This is clearly evident in the 2018 Report on the 55-unit proposal[82]. It emphasises that the "*site is not located adjacent to the existing urban area as identified in the adopted local plan and its location has been found by Officers to be relatively poor in terms of its accessibility*"[83] but the mitigation measures

[80] McMurtary and Burden XX

[81] The Appellants rightly did not suggest that his expertise as a planning witness did not cover accessibility issues, nor that his evidence should be given reduced weight on the basis that he was not a highways expert. That is correct and consistent with the approach of Inspector Jenkins in §63 of the Newgate Lane North and South decisions (CDJ.4 and see Jupp Proof §6.18).

[82] CDH.3

[83] *Ibid.* page 17

(of which the right of way over the M27 bridge was the *"main improvement"*[84]) that would *"service the site and surrounding area are a substantial improvement which Officers consider satisfactorily address the issue of accessibility"*[85]. This is not a ringing endorsement of the locational sustainability of the site, just a recognition that accessibility issues had been sufficiently addressed for the 55-unit scheme. Moreover, the analysis expressly factors in the beneficial impact of the right of way for *existing* residents. That was a benefit for the 55-unit scheme (since the right of way is preferable to the permissive path), but because it is already secured by the fallback, it is not a benefit of the Appeal 1 proposal, as Mr McMurtary accepted[86].

35. The Council's position is also clearly evident in the SHELAA for the Emerging Local Plan (which is a high level assessment premised on 55 dwellings, and which notes that the site has only 3/10 "*Accessible Facility Types*"[87]) and the SA for the Emerging Local Plan (which is again a high level assessment premised on 55 dwellings and which expressly notes the "*relatively poor accessibility of the site*"[88]).

36. As can be seen, therefore, the planning history does not establish the locational sustainability of the site for up to 125 dwellings.

The County Council's Position

37. The Appellants placed considerable reliance on the lack of objection from HCC, and the agreement with them set out in the Agreed Statement on Transport Matters[89]. Their views must, of course, be considered, but you are free to depart from them, as Inspector Jenkins did in the Newgate Lane North and South decisions[90]. Their position of "*no objection*" is expressly subject to "*securing the agreed mitigation package*"[91] i.e. they would be objecting but for the mitigation, and it is therefore clear that they share the Council's concerns as to the inherent unsustainability of the location for housing development of this scale. Moreover, as is clear from the focus (in the

[84] *Ibid.* page 15
[85] *Ibid.* page 17
[86] Under XX
[87] ID.06 page 70
[88] ID.04 page 33/69
[89] CDD.4
[90] CDJ.4 at §63
[91] CDD.4 §7.1

Agreed Statement) on 2/5km distances to the exclusion of other factors, their approach suffers from precisely the same flaws as the Appellants' approach.

Accessibility on Foot

38. The Appellants' position is that if a facility falls within a 2km walking distance, that is in all cases an acceptable walking distance[92]. That is not supported by the relevant guidance.

39. Mr McMurtary sought to source his 2km figure from Guidelines for Providing for Journeys on Foot ("CIHT 2000")[93], suggesting at §7.8 of his proof that this provides an *"acceptable walk distance"* of 2km for amenities. As he accepted under cross examination, it does no such thing. Table 3.2 provides "acceptable" walking distances of 1km (for commuting/school/sight-seeing) and 800m (for elsewhere). The "desirable" distances are 500m (for commuting/school/sight-seeing) and 400m (for elsewhere). The 2km distance is the "preferred maximum" for commuting/school/sight-seeing, the preferred maximum for elsewhere being 1.2km. Table 3.2 therefore provides no support for using 2km as an "acceptable" distance, and no support even for using it as a "preferred maximum" for trips other than "commuting/school/sight-seeing". It is notable that Inspector Jenkins relied on the "acceptable" distances in the Land at Newgate Lane North and South decisions[94], and the Council commends this to you. Moreover, CIHT 2000 also recognises that distances are not the only factor to consider. It is clear that the distances in Table 3.2 are for "*pedestrians without a mobility impairment*"[95]. And even for those with no mobility impairment, it emphasises "*steep gradients and/or steps*" as being features of a poor quality pedestrian environment[96], and it also emphasises that if people are to choose to walk rather than drive, the pedestrian environment must be high quality so that the walk is a pleasant experience[97].

[92] CDD.4a §2.1
[93] CDH.27. It is common ground that, despite its age, CIHT remains applicable, and this was also accepted by Inspector Jenkins in the Newgate Lane North and South decisions (CDJ.4 §62).
[94] CDJ.4 at §§62 and 64
[95] CDH.27 §3.32
[96] CDH.27 Box 3.1 see also §3.36
[97] CDH.27 §3.40

40. These themes are taken forward in Planning for Walking[98] ("CIHT 2015"). This emphasises the significant proportion of people with mobility issues[99], it introduces "5Cs" of Good Walking Neighbourhoods[100], it emphasises that "*most people will only walk if their destination is less than a mile away*" and it refers to "*walkable neighbourhoods*" with a typical catchment of 800m[101]. It also emphasises that the "*propensity to walk or cycle is not only influenced by distance but also the quality of the experience; people may be willing to walk or cycle further where their surroundings are more attractive, safe and stimulating*"[102].

41. The Council's Accessibility Study[103] for the Emerging Local Plan provides further relevant guidance, with accessibility standards for able bodied people (all considerably lower than 2km) set out in Table 1. Paragraph 4 also makes clear that the time-distance standards are "*an indication of the maximum preferred distance for walking to facilities. It is felt that beyond these distances, the majority of able-bodied people would begin consider taking alternative modes of transport in particular, the private car to make journeys*".

42. Finally, the National Travel Survey 2020 indicates that walking is the most frequent mode used for short trips: 82% of trips under one mile were walks in 2020, slightly higher (perhaps as a result of Covid) than in 2019, where 80% of trips under one mile were walks[104]. Mr McMurtary drew attention to this in §5.9 of his evidence, though he did not note that the NTS goes on to say that for all other distance bands, the car was the most frequent mode of travel[105]. Moreover, the fact that around four fifths of trips under a mile (i.e. under 1.6km) were walks does not support the view that a 2km distance is acceptable, quite the reverse.

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[98] CDH.29
[99] CDH.29 at §2.4 (page 8)
[100] CDH.29 page 26
[101] CDH.29 page 29 §6.3. See also Manual for Streets §4.4.1
[102] CDH.29 at page 30
[103] CDG.6
[104] CDH.28 at page 7. Under XX Mr McMurtary suggested that "trips" under the NTS were one-way (such that outward and return halves of a return trip are treated under the NTS as two separate trips). As discussed at the beginning of the day yesterday, it appears from the "definition of a trip" under the NTS: 2020 notes and definitions (ID.20) that he was correct in his understanding. However, there is in reality an obvious difference between, for example, a commute to work, and a trip to buy milk – in the latter the two trips come immediately together and so the experience will be of a greater amount of walking at one time.
[105] *Ibid.*

43. Mr Jupp's evidence provided a detailed analysis of accessibility for walking based on all of this guidance, and analysing not only the relevant distances but also the power of destinations, and the quality of routes. The same cannot be said for Mr McMurtary's evidence, or for the Agreed Statement with HCC, which both focussed in very large part on whether facilities were within a 2km distance. As Mr Jupp showed, if the "acceptable" distances under CIHT 2000 are used, or those in the Council's Accessible Background paper, the number of services and amenities complying with those distances drops substantially. But even on the 2km approach, the number and range of services within that distance is limited.

44. Moreover, as Mr Jupp showed, there are significant impediments to walking in this area beyond mere distances. In closing, I draw attention to two in particular:

    a. First, the topography is an important constraint to the south. The right of way will inevitably be steep, and therefore off-putting to the elderly and those with mobility constraints. As discussed in the conditions and obligations session, the path of the right of way is set by the parameters plans within the Appeal 1 site, but not the Appeal 2 site, so the approach in the Section 106 gives some flexibility on the route in the Appeal 2 site (but not the Appeal 1 site). Any suitable gradient up the Appeal 2 slope would require considerable snaking of the right of way, but the inevitable increases in distances to amenities have not been analysed by the Appellants, and nor have the landscape and visual implications of such a path.

    b. Second, there are constraints to the east as a result of the inadequate footways. The Appellants are widening part of this[106] but, as Mr McMurtary accepted, the footway around and over the bridge will not be changed, such that the narrow footway around the traffic light to the west of the bridge will remain. Contrary to Mr McMurtary's view, that is clearly problematic for disabled users and those pushing buggies.

[106] McMurtary Appendix C

45. For those reasons, the accessibility of the Appeal 1 Proposal by walking is limited and the additional mitigation (footway improvements and increased travel plan contributions) will not render it accessible by walking.

Accessibility by Cycle

46. A greater range of services and amenities are accessible within a 5km cycling distance. However, the approach of Inspector Jenkins in the Land at Newgate Lane North and South decisions should be adopted[107]. As Inspector Jenkins rightly found, cycling has a markedly lower modal share than walking, which "*reduces the weight attributable to this factor".* Moreover, the topography to the south will be a marked impediment to cycling in that direction, which may be ameliorated to some extent by snaking of the route, though this is in itself less than ideal for cyclists and would increase the distance to destinations.

Accessibility by Bus

47. The Appeal 1 scheme aims to provide some greater security for the local bus service (through providing a turning facility and a temporary financial contribution) but it will not improve the service, which runs only every 70 minutes during the week and every hour on Saturday, with no Sunday service[108], and which starts late and finishes early even during the week[109]. Mr Jupp was right to suggest that the attractiveness of the bus service to commuters would be limited[110].

Accessibility by Rail

48. Fareham railway station has a reasonable service, but it is 3.5km from the site[111], well beyond the 800m that CIHT 2015 suggests people will walk to get to a railway station[112]. Some may cycle

[107] CDJ.4 at §73 and see Jupp Proof §9.58
[108] CDD.4 Table 3.1
[109] Jupp Proof §9.54
[110] Jupp Proof §9.55. It should also be noted that the cessation of the bus service at the time of the 55-unit consent was not considered by Officers (see CDH.4 at §2.8) to amount to a material change which would alter the conclusions on accessibility reached in the earlier 2018 report (CDH.3), indicative of the fact that the bus service does not make a significant contribution to the option of non-car travel.
[111] CDD.4 §3.15
[112] CDH.29 page 30 and see CDJ.4 §68

there or take the bus, but the issues with these (outlined above) will limit the number choosing to access the railway station by them.

Comparison with the Fallback

49. As can be seen, therefore, the Appeal 1 proposal is not accessible. The Appellants have sought to dodge this issue by suggesting that it is no less accessible than the fallback, but that is not the case. As Mr Jupp noted, the assessment of whether a proposal is sustainably located must be informed by its scale[113]. A site that is sufficiently accessible for one house might not be accessible for more, and that principle is equally applicable when considering a more than doubling of the 55-unit fallback. Mr McMurtary appeared to consider that a larger proposal could only be viewed as less accessible if it led to demonstrable highways harms (in terms of junction capacity, capacity of the footway to take the additional footfall etc.) but that cannot be right. The Appeal 1 proposal will lead to more car use in a location which is not inherently accessible and that increased car use will not be fully mitigated by the mitigation package. Part of the Appellants' case was that disproportionately more mitigation (i.e. more per unit) was being provided than for the fallback[114], but this rather makes the Council's point. The reason disproportionately more mitigation is required is that the Appeal 1 proposal is inherently less sustainable. But despite more mitigation being on offer (not much more – as Mr Jupp explained), it does not resolve the accessibility harms of 125 units in this location.

Impact of Welborne

50. Finally on accessibility, the Appellants are wrong to rely on Welborne. As Mr Jupp explained, the Highstead Area of Welborne (the closest area to the Appeal 1 site) is not likely to be built out until 2032 to 2042. Its layout is not yet determined, and the extent (if at all) to which it will provide additional accessible services and amenities for the Appeal 1 proposal is unknown.

[113] Jupp Proof §9.56

[114] See, for example, McMurtary Proof §6.16

Overall Conclusions on Accessibility

51. For those reasons, and as Mr Jupp has shown, the Appeal 1 site is not an accessible location for up to 125 dwellings, which brings Appeal 1 into conflict with Local Plan Policies CS5[115] and DSP40 and the NPPF and is a clear negative of moderate weight[116] in the planning balance. Contrary to Mr Simons' position in opening, Mr Jupp did not tell you *"that his evidence on this issue should not lead to the appeal being dismissed"*[117]. To the contrary, although he accepted[118] that the lack of accessibility is not by itself (i.e. if there were no other harms) sufficient to justify the dismissal of Appeal 1, he was very clear that this is a negative of moderate weight which could tip the balance depending on your views on other issues.

Spatial Strategy for the Location of New Housing

52. The second sub-issue under Main Issue 1 relates to the spatial strategy for the location of new housing. As set out above, the Appeal 1 proposal is contrary to the spatial strategy established by policies CS6 and DSP6, but Mr Jupp accepted that the parts of those policies relating to the location of new housing should receive limited weight due the shortfall in five-year housing land supply[119].

53. However, under both Main Issue 1 and Main Issue 2, the Appeal Proposal is contrary to other policies, including DSP40, which sets the approach where (as here) a five-year land supply does not exist. The Appeal 1 proposal's conflict with DSP40 is fundamental and puts the proposal in breach of the development plan overall. Moreover, the Appeal 1 proposal is also contrary to the spatial strategy under the Emerging Local Plan. I return to these issues under the Planning Balance below.

[115] Mr Jupp accepted that CS15 would not be breached, a position consistent with the Newgate Lane North and South decisions (CDJ.4 at §77) in which Inspector Jenkins found the limited sustainable transport options meant that CS15 was complied with, but in which the locational unsustainability led to breaches of CS5 and DSP40.
[116] Jupp XIC
[117] Appellants' Opening (ID.12) at §4(iii)
[118] Jupp Proof §9.60
[119] Jupp Proof §6.40

G. MAIN ISSUE 2: THE EFFECT THE PROPOSED DEVELOPMENT WOULD HAVE ON THE CHARACTER AND APPEARANCE OF THE AREA, WITH PARTICULAR REGARD TO WHETHER OR NOT IT WOULD ENABLE A DETAILED SCHEME TO COME FORWARD THAT WOULD REFLECT THE CHARACTER OF THE NEIGHBOURING SETTLEMENT AND MINIMISE ANY ADVERSE IMPACT ON THE COUNTRYSIDE

Introduction

54. On Main Issue 2, the Appellants would have you believe that they have pulled off something of a magic trick. They suggest that their design is so good that they can develop more than twice the number of dwellings over a larger area of the site with reduced landscape and visual impacts in comparison with the 55-unit fallback, indeed with overall benefits. Regrettably, that is not the case, as Mr Dudley and Mr Russell-Vick have shown.

55. As Mr Dudley accepted[120], it *may* be possible for around 75-80 dwellings to come forward without unacceptable landscape and visual harms, but the Appellants have not demonstrated this, nor have they demonstrated that such a scheme could be acceptable in design terms[121]. What is before you is the 125-unit scheme, and the harms of this are unacceptable, as explained below.

Landscape and Visual Impacts

Comparison of the Appeal 1 and 55-Unit Schemes

56. The 55-unit scheme and its associated community park are sensitively designed to avoid significant landscape and visual harms. As the consented parameter plan[122] shows, development parcels are surrounded by landscaping and generous view corridors have been incorporated, which flare through the development to connect in a meaningful way with the highest ground to the south. A low density of around 22dph[123] allows considerable landscaping throughout the site, and this is well demonstrated in the Illustrative Masterplan[124]. The scheme is wholly consistent with the HA10 allocation, and sympathetic to the Draft Development Framework[125].

[120] XIC and XX
[121] Russell-Vick XX
[122] Russell-Vick Appendix C
[123] Russell-Vick Appendix D
[124] Russell-Vick Appendix E
[125] CDF.1 at page 231. And see Russell-Vick Appendix D

57. The same cannot be said for the Appeal 1 scheme. Built form extends some 30m further to the south (and therefore around 5m higher)[126] jutting up against the HA10 boundary, with the open space sitting further south still. The developable area is increased by about 41%[127] and extends up to around the 29m contour[128], beyond the 25m point where the contours start to gather[129]. Mr Rummey suggested[130] that the height difference between the schemes was less than a metre, but that was based on an unwarranted assumption that the 55-unit scheme would remain at two storeys at the south, which forgets that the scheme is outline and that heights are not set by the outline permission, such that a reduction in height towards the south is to be expected as part of the feathering of the development into the landscape. Moreover, although two view corridors are still proposed in the Appeal 1 scheme, they offer a poorer visual connection with the open space to the south: they are substantially narrower, have pinch points within them, and do not flare within the built areas, and the western one is now orientated towards an undistinguished house, rather than the high point in the landscape.

The Landscape Baseline

58. Mr Dudley appraised the landscape baseline in great detail in section 3 of his Proof. As he showed, the various tiers of character assessment demonstrate that the tributary valley landscape in which the Appeal sites are located is associated with the Meon Valley instead of the more open downland to the east, with the railway line marking a "*sharp change in character*". And although the landscape has some urbanising influences, such as the M27 motorway and settlements such as Funtley, it remains one of high sensitivity. It is important to address the landscape baseline fully and fairly. The Appellants have focussed[131] on the words "*somewhat scruffy fringe character*" in the 2017 Fareham Landscape Assessment[132] but they have mischaracterised the quote: in context it is clear that, despite there being elements that in themselves have a somewhat scruffy, fringe character, such influences are "*absorbed by the*

[126] Dudley Proof §2.23
[127] See §6 above
[128] Rummey Rebuttal Appendix 4 Plans 1 and 2
[129] Dudley Proof §4.18
[130] Rebuttal §1.13(i)
[131] Also referred to in ID.04. See Appellants' Opening Submissions §§4(ii) and 10 and Rummey Proof §2.1.9
[132] CDG.2 page 121

extensive woodland and tree cover and the landscape retains an essentially rural and unspoilt wooded farmland character" and the "*character of the landscape within the triangle of land between the two sections of disused railway line and the motorway corridor remains essentially rural and unspoilt"*[133]. As you would expect given its location by the road and its land use, there are some detracting influences for the Appeal 1 site itself, but these should not be overstated, nor used to dilute the sensitivity of the landscape within which the Appeal 1 site is set.

59. The wider landscape baseline will, of course change significantly in the long term once the Welborne Garden Village comes forward, but the significance of this should not be overstated. Welborne lies in the open downland to the east, not in the Funtley triangle or the Meon Valley with which the triangle is associated. Welborne will be apparent in some views from the Appeal sites, but it will not urbanise the Appeal sites or increase their capacity to absorb development. It is to be noted that the authors of the Technical Review[134] were well aware of the Welborne Plan and the provision of 6,000 new homes it would bring forward[135] when deciding to recommend that the whole of the Funtley triangle (apart from the areas already developed or allocated under the Emerging Local Plan) be an Area of Special Landscape Quality, as was the Council when it decided to include the designation in the Emerging Local Plan.

Valued Landscape

60. In determining the 55-unit application, the Council was very clear that the site was within a "*predominantly high sensitive landscape*" and that development would risk "*significant detrimental effects on the character and quality of local views*"[136]. The Council did not at this stage use the phrase "*valued landscape*" but its views as to the high value of the landscape were clear.

61. Subsequently, in September 2020, the Technical Review conducted a thorough appraisal of the landscape quality within the Borough and (as already noted) recommended that the whole of the Funtley triangle, apart from areas that were either built on or proposed to be built on in the Emerging Local Plan, be included in the ASLQ designation. The second paragraph 7 on page

[133] *Ibid.*
[134] CDG.4
[135] See, for example, CDG.4 page 28 at §3 and page 69
[136] CDH.3 page 11

66[137] is abundantly clear that the whole of the area satisfied the criteria to qualify as a valued landscape, and the exclusion of the HA10 allocation area was not because it was not part of that area, but because it was proposed to be allocated. But for the allocation, it would have been included.

62. In his first consultation response on the Appeal 1 application[138], Mr Dudley squarely asserted that proposal would harm a valued landscape and this was relied on in the Officer's Report[139], in the putative reasons for refusal, and in the Council's Statement of Case. As can be seen, and contrary to the Appellants' position, Mr Dudley's views are fully supported by the Technical Review and the Council's decision to bring forward the ASLQ designation in this area under the Emerging Local Plan, as well as the Council's position on the Appeal 1 scheme at application stage and in its Statement of Case.

63. In assessing whether the Appeal 1 proposal would harm a valued landscape, it is essential to consider what the landscape is and whether it qualifies as valued. This requires selection of the correct landscape unit, which is very unlikely to be a single application site. This approach is supported by a range of appeal decisions and High Court authority:

    a. In the Wendover decision[140] 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.".

[137] CDG.4 at page 66
[138] CDB.12 at page 10
[139] CDC.1 §7.12
[140] CDJ.8

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[141]:

> "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[142], 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."

64. The Landscape Institute's Technical Advice Note regarding assessment of landscape value[143] 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."

65. Of course, when looking at a landscape unit, there will be variation across it. However, as Mr Dudley emphasised, the valued landscape will be the whole of the landscape unit, and will not excise parts of it that have detracting influences. 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)."

[141] CDK.20
[142] CDJ.9
[143] CDH.23

66. 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".

67. Mr Rummey did not demur from any of this under cross examination, but in his evidence he adopted a wholly inappropriate analysis of valued landscape at a site level[144]. This approach of salami-slicing a single landscape unit is contrary to principle, 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.

68. On proper analysis, as Mr Dudley explained, the proper landscape unit is the Funtley triangle (less the built-up areas) and the whole of this is valued landscape. Although separated from the Meon Valley by the Deviation Line, it is clearly associated with the Meon Valley to the west and shares a common landscape structure (as the aerial image at page 2 of the LVA Addendum makes clear[145]). In this context, it is notable that the Inspector in the very recent 84 Fareham Park Road decision[146] accepted that that site (which falls in the Meon Valley to the south west of the Appeal site just south of the M27 motorway) fell within a valued landscape.

69. For those reasons, Mr Dudley's evidence that *both* Appeal sites fall within a valued landscape should be preferred, but even if the Appeal 1 site (or the slightly smaller HA10 area) were excluded, it would not change the analysis. The issue is whether the Appeal 1 proposal "protects and enhances" the valued landscape, something which it plainly would not do even if the valued landscape excluded the Appeal 1 site (or HA10 area).

Landscape Effects

70. Mr Dudley conducted a detailed appraisal of the landscape effects of the Appeal 1 proposal (and the associated community park) in section 4 of his evidence. As he showed, there would be a

[144] Rummey Proof page 23ff culminating in §2.6.35 and Rummey Rebuttal §§1.23-5
[145] CDA.8 page 2
[146] ID.19

range of significant landscape harms from major/moderate adverse to major adverse[147]. These would be permanent, and there would be additional harms during construction on a temporary basis. This compares with the 55-unit scheme (and its associated community park) which would result in lesser impacts, none of which would be significant in LVA terms[148]. This is a crucial distinction: changes in scoring of "*one degree*"[149] may sound "*marginal*"[150], but that is not the case, since they mean that the Appeal 1 scheme has tipped from acceptability (no significant effects) to unacceptability (significant harms) in terms of its landscape impacts.

Visual Baseline and Effects

71. In sections 5 and 6 of his Proof, Mr Dudley conducted a detailed appraisal of the visual baseline and visual effects of the Appeal 1 proposal (and its associated community park). As he showed, there would be a range of significant visual harms ranging up to major adverse. The majority of these would be permanent, and there would be additional harms during construction on a temporary basis. As Mr Dudley accepted[151], the harms for receptors at viewpoints 4, 7 and 8 would be reduced once the Highstead Area of Welborne has come forward (which as Mr Jupp explained is not likely to be until 2032 to 2042) but this would not be the case for the other viewpoints. As with the landscape effects, the visual harms of the Appeal 1 proposal are greater than under the 55-unit fallback, tipping from a level which was "minimised" for the purposes of DSP40, to one which is not.

Overall Conclusions on Landscape and Visual Impacts

72. For those reasons, the Appeal 1 Proposal would cause both temporary and permanent harm to landscape character and visual amenity and would harm a valued landscape. The Appeal 1 Proposal fails to minimise its landscape and visual harms to acceptable levels, and breaches: Policies CS14, CS17, DSP6 and DSP40(ii) and (iii); emerging Policies DS1, DS3, HP4(b) and (c) and HA10(f); and paragraphs 174(a) and (b) of the NPPF.

[147] Dudley Proof §4.51.
[148] Dudley Proof §§4.53-4
[149] Dudley Proof §§4.54
[150] To use Mr Simons' word in cross examination of Mr Dudley
[151] XIC and XX

Design Issues

73. The Appeal 1 scheme is in outline with all matters reserved except access. Many design issues are therefore for consideration at reserved matters stage. However, certain key design matters are set by the parameter plans; and to grant outline permission you must be satisfied that an acceptable design for a development of up to 125 dwellings (in accordance with the parameter plans) is capable of coming forward.

74. Mr Rummey fairly accepted in his evidence[152] that the masterplan is "*not perfect*" and that there was a "*great deal of work to do*" to get to a position where it could not be faulted, though he nonetheless expressed confidence that an acceptable detailed scheme could come forward. Such confidence is misplaced. As Mr Russell-Vick explained, the masterplan does not give confidence that various design issues are capable of being addressed while bringing forward 125 units on the site, and key aspects of the design settled by the parameter plans are also unacceptable.

The 55-Unit Scheme

75. As already noted, the approved parameter plan for the 55-unit scheme[153] shows a sensitively designed scheme, with development parcels surrounded by landscaping and generous view corridors which flare through the development to connect in a meaningful way with the highest ground to the south. A low density of around 22dph[154] allows considerable landscaping throughout the site, and this is well demonstrated in the Illustrative Masterplan[155]. The scheme is wholly consistent with the HA10 allocation, and sympathetic to the Draft Development Framework[156]. A detailed scheme has not yet been brought forward, and there is therefore scope for further changes to the Illustrative Masterplan should they be thought desirable. As the Council has shown, the fallback is a well-designed scheme to which considerable thought has been given over a number of years.

[152] XIC and XX
[153] Russell-Vick Appendix C
[154] Russell-Vick Appendix D
[155] Russell-Vick Appendix E
[156] CDF.1 at page 231. And see Russell-Vick Appendix D

Design Issues with the Appeal 1 Scheme

View Corridors

76. The approach to view corridors in the Appeal 1 scheme is a fundamental departure from the approach under the Draft Development Framework[157] and 55-unit permission.

77. The eastern view corridor is maintained in approximately the same position and orientation, but is very considerably narrower, reducing the connection between the north of the site and the high point in the south. This is objectionable in landscape and visual terms, as Mr Dudley explained, though Mr Russell-Vick did not consider the design of the corridor to be objectionable in design terms.

78. By contrast, the western view corridor is realigned in the Appeal 1 scheme so that it no longer provides an expanding view to the high point in the landscape, but rather provides a view (considerably narrower than the western corridor under the 55-unit scheme and not flared through the development) along what is currently a fenceline with a couple of oaks, a hawthorn and a few scattered bushes along it up to an undistinguished house. The Council fundamentally objects to this change to the western view corridor in both landscape and visual and design terms. As a result of the changed approach, the important angled view, which is currently appreciated by everyone traveling east along Funtley Road as they emerge from the tunnel under the Deviation Line, will be lost under the Appeal 1 scheme.

79. Mr Rummey's rationale for changing the western view corridor is that it better aligns with a historic hedgerow, but this has now largely been lost apart from a few remnant trees and bushes and a fence line. The historic mapping[158] shows the line, but its historic character is unknown, and as a hedge in a farmed landscape it is highly unlikely that it would have been tall enough to impede the views across the site. The views retained by the diagonal corridor in the 55-unit scheme are in this sense historic views which remain important today, something which cannot be said for the largely lost hedgerow. In any event, Mr Rummey accepted under cross examination that the historic line of the hedge could be featured at reserved matters on the 55-unit scheme in addition to the diagonal view corridor if considered desirable (he suggested this

[157] CDF.1 at page 231. And see Russell-Vick Appendix D

[158] Rummey Proof page 15

might have knock-on implications for the design, but the advantage of a low-density scheme is it allows flexibility at reserved matters stage). Moreover, neither scheme would recreate the historic hedgerow, since this would subdivide the site. For all these reasons, the historic hedgerow does not justify the loss of the western diagonal view corridor, which is a very significant harm of the Appeal 1 scheme.

Design Approach Adopted for the Edges of The Site

80. Both the original Illustrative Masterplan[159] and the more recent version produced by Mr Rummey as part of his Proof[160] show an almost continuous road frontage parallel to Funtley Road with housing up against that road and its footway. As Mr Russell-Vick noted, such an approach would give rise to effectively three parallel roads, albeit subdivided by landscaping, which would be a much more urban and car dominated appearance than under the 55-unit scheme[161]. Layout is, of course, a reserved matter, but the Appellants have made no attempt to demonstrate that an alternative approach to the edges of the site could come forward acceptably (i.e. suitable in itself and without knock on consequences in terms of parking provision, garden sizes, landscaping etc) and there is no basis for assuming it.

Degree to which the Appeal 1 Scheme Reflects the Character of Funtley Village

81. Mr Russell-Vick's evidence was underpinned by a rigorous understanding not only of the Appeal sites but also of Funtley Village. As he noted, Funtley has its own particular history which, although unremarkable, is obviously central to its own form and character, and deserves a bespoke response related to it[162]. Moreover, as Mr Russell-Vick explained, Funtley will not be subsumed by Welborne Garden Village when it comes forward, but remain separate so its character is retained.

82. The Appeal 1 scheme does not reflect the character of Funtley and does not intend to. It is abundantly clear from the Design and Access Statement and the Meon Valley Village Precedent Study that the design is rather a response to various precedents from the Meon Valley and

[159] CDA.19
[160] Rummey Proof Appendix 5.1
[161] Russell-Vick Proof §5.13
[162] Russell-Vick Proof §5.20

beyond, and this is reinforced by §2.11.15 of Mr Rummey's Proof which denigrates Funtley as a "*poor exemplar*" for reflection.

83. One of the key design failings in the Appeal 1 scheme comes from the approach to density. As already noted, the 55-unit scheme promoted a low density of 22dph[163], broadly consistent with the 20dph proposed under the Draft Development Framework[164]. By contrast, Appeal 1 proposes a dense up to 40dph band fronting Funtley Road, followed by a (still dense) up to 35dph band across the middle of the site, and up to 25dph on the southern edge. Such an approach to density is insensitive and does not reflect local character in Funtley, as Mr Russell-Vick described[165].

84. Contrary to Mr Rummey's view, and even if you do not accept the Council's concerns over density, Mr Russell-Vick was also right to suggest that it has not been established that 125 units can be accommodated acceptably on site. Although Mr Rummey has made progress with the Masterplan at Appendix 5.1 to his Proof, this does not fully address Mr Russell-Vick's concerns, as he explained[166]. It does not appear to show that the minimum 11m garden size under the Design Guide SPD[167] can be met in all cases (and note this is a minimum – the Guide is clear that large family homes should have more generous sized gardens), it creates overlooking issues for certain properties (see, for example parcel D), and it relies on excessive amounts of undercroft parking. The precise details would be for reserved matters, but it is for the Appellant to satisfy you that 125 units can acceptably come forward on site, and they have not done so.

Overall Conclusions on Design

85. For those reasons, the Appeal 1 proposal is flawed in design terms for a range of reasons, which puts it in breach of the National Design Guide, paragraphs 126, 130 and 134 of the NPPF, Local Plan policies CS14, CS17, DSP6 and DSP40 and Emerging Local Plan policies D1 and HA10(a) and (f).

[163] Russell-Vick Appendix D
[164] CDF.1 at page 231. And see Russell-Vick Appendix D
[165] Russell-Vick Proof §§5.24 to 5.25
[166] XIC and XX
[167] CDE.7 page 14

Overall Conclusions on Main Issue 2

86. As set out above, the Council remains strongly of the view that the Appeal 1 proposal will harm the character and appearance of the area, failing to enable a detailed scheme to come forward that would reflect the character of Funtley, and failing to minimise adverse impacts on the countryside.

H. PUTATIVE REASONS FOR REFUSAL (C) TO (H)

87. As already noted, the issues under putative reasons for refusal (c) to (h) (as well as the further issue concerning habitats impacts to the New Forest) have now resolved subject to execution of the Section 106.

I. BENEFITS OF THE APPEAL 1 PROPOSAL

88. In recommending refusal, Officers (and in accepting that recommendation, Members) had proper regard to the benefits of the Appeal 1 Proposal[168] and Mr Jupp very fairly did the same in his evidence[169]. The benefits are in aggregate substantial, but they should not be overstated. It is important to remember that to count as a benefit, a factor must be additional to what would otherwise be provided under the 55-unit fallback[170]. Moreover, measures which are in fact mitigation should not be considered benefits at all.

89. The main benefits of the Appeal 1 Proposal are the provision of market, affordable and self or custom build housing. Taken together, these are benefits of substantial weight[171], though the benefit is the increase from that which would otherwise be provided under the 55-unit scheme (i.e. up to 70 additional houses, of which up to 28 would be affordable, and up 3 additional self or custom build plots). It is important to have in mind the actual numbers when assessing the extent of the benefit: so, for example, although "*substantial weight*" was given to the provision of

[168] CDC.1 at §8.108-9
[169] Section 10 of his Proof and orally
[170] As already noted, you could alternatively conduct a two step approach in which you consider the harms and benefits of the Appeal 1 scheme in full (i.e. ignoring the fallback) and then conduct a separate comparison with the fallback, but this would be laborious and the end result in this case would be the same.
[171] Jupp Proof §10.9

self build service plots in the Roundhouse Farm case[172], this was for 10 plots (over three times the additional provision secured by the Appeal 1 scheme in comparison with the fallback).

90. 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. Given the larger scale of the Appeal 1 proposal compared with the 55-unit scheme, there is additional benefit here to which Mr Jupp attached moderate weight[173].

91. The Community Park is not a benefit in the planning balance, since a slightly smaller park would come forward in comparison with the fallback. Indeed, Mr Jupp was generous to the Appellants not to treat the reduction in the Community Park proposal as a harm of the Appeal 1 Proposal. As for the on-site open space secured by Schedule 7 of the Section 106, this is required by policy to mitigate the impacts of the scheme (which of course are greater than for the fallback given the additional recreational pressure and demand for open space from the additional 70 dwellings) and so is not a benefit.

92. The community building / local shop is also not a benefit in the planning balance, since it is also secured by the fallback.

93. The majority of the highway works, highway contribution, public right of way and travel plan obligations secured under Schedule 3 of the Section 106 are already secured by the 55-unit permission. The additional highways measures[174] are modest, but in any event these are required as mitigation[175] and any additional benefit to existing residents is limited.

94. The financial contributions secured by Schedule 4 to the Section 106 and the nitrates mitigation land secured by Schedule 9 are also required as mitigation and so are not benefits.

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[172] Burden Appendix TB12 at §52
[173] Jupp Proof §10.22
[174] McMurtary Proof section 6
[175] It is clear from CDD.4 that HCC view the mitigation as being required to remove their objection – see §7.1

95. Mr Burden relied on landscape enhancements[176], but as the Council has shown the overall landscape and visual impacts are negative. Mr Rummey also appeared to suggest that the Appeal 1 scheme would avoid deterioration of the landscape, but to the extent this applies, it is equally the case with the 55-unit scheme.

96. The Appellants rely on ecological benefits, to which Mr Jupp ascribed limited positive weight[177]. He was again being generous to the Appellants, since they have not established that any ecological benefits are additional to those secured under the 55-unit scheme (a biodiversity net gain condition has been proposed, which was not imposed on the 55-unit scheme, but the expectation of the 55-unit scheme must be that it will itself give rise to a significant biodiversity net gain).

97. Mr Burden (relying on the shadow HRA[178]) also suggested that the "additional security" to the New Forest sites from the provision of on-site open space in addition to payment of the requisite financial contribution for mitigating recreational impacts on the New Forest sites should be viewed as a "net benefit" of the Appeal 1 scheme[179], but this fails on analysis for two reasons. First, to the extent that "additional security" is obtained, it is greater under the 55-unit scheme, which has more open space with fewer dwellings. Second, there is already certainty beyond a reasonable scientific doubt as to the absence of adverse effects on the integrity of the New Forest sites through the payment of the requisite contribution, which is all that the Conservation of Habitats and Species Regulations 2017 require. Any additional security would be *de minimis*, and it is not (nor could it be) suggested by the Appellants that the draw of the open space on site is such as to cause any enhancement to the integrity of the New Forest sites through reduced recreational impacts. Mr Burden was therefore right to accept under cross examination that this was not a benefit of any weight.

[176] Burden Proof §§4.95ff
[177] Jupp Proof §10.22
[178] CDAA.1 at §§4.54 and 5.13
[179] Burden Proof §3.164

98. Overall, Mr Jupp rightly viewed the additional benefits of the Appeal 1 Proposal beyond those secured by the 55-unit fallback as significant[180], but they have been considerably overstated by the Appellants.

J. PLANNING BALANCE ON APPEAL 1

99. In the light of all of the evidence you have heard, the Council maintains its position that planning permission on Appeal 1 should be refused.

100. In this section, as Mr Jupp did in his evidence, I proceed on the likely assumption that that the Section 106 will be executed. If that does not happen, and the required non-habitats obligations are not secured, his conclusion that the planning permission should be refused will be further reinforced. And if the habitats obligations are not secured[181] (so as to provide you, as competent authority, with certainty beyond a reasonable scientific doubt[182] 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).

101. As in all cases, the Appeal 1 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. As set out above, the Council considers that the Appeal 1 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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[180] Proof §10.12

[181] Or if you disagree with the parties as to the avoidance of an adverse effect on the integrity of any European Sites

[182] The requisite standard – see ***Mynydd*** (CDK.9) at [8(5)-(6)] and ***An Taisce*** (CDK.14) at [17]-[18]

102. As a result of the absence of a five-year housing land supply, paragraph 11(d) of the NPPF is engaged, and the Council accepts that (assuming the habitats issues are resolved) there would be no "clear reason" for refusing the development under paragraph 11(d)(i). The tilted balance under paragraph 11(d)(ii) therefore applies, but as Mr Jupp explained, it falls firmly against the Appeal 1 Proposal. The limited accessibility commands moderate weight, the landscape and visual harms to a valued landscape command substantial weight, and the harms from a flawed design command substantial weight. To these must be added the policy harm from the breaches of the strategy and policies of the development plan, and most of all Policy DSP40. The policy harm is itself a fundamental issue under a plan-led system, but this is something never adequately recognised under the Appellants' 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 ***SSCLG v Hopkins Homes Ltd*** [2017] 1 WLR 1865 at [21])[183]. 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][184]).

103. For all of those reasons, planning permission should be refused on Appeal 1. The benefits are significant, but they are significantly and demonstrably outweighed by the harms. The Appeal 1 proposal is not just significantly and demonstrably more harmful overall[185] than the fallback, but significantly and demonstrably more harmful overall than the current use of the site. Even if the fallback did not exist, therefore, the result would be the same. The Appeal 1 proposal is, as I noted at the outset of these submissions, an attempt to push the envelope past breaking point, and the result is a wholly unacceptable scheme.

[183] CDK.4. See also §12 of the NPPF.
[184] CDK.18 at §56
[185] i.e. taking into account harms and benefits

K. OVERALL CONCLUSIONS

104. For the reasons given above, the Council does not oppose Appeal 2 but invites you to dismiss Appeal 1.

NED HELME

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17th February 2022