



---

## Appeal Decisions

Hearing Held on 22 June 2021

Site visit made on 25 June 2021

**by G D Jones BSc(Hons) DipTP DMS MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 28<sup>th</sup> July 2021**

---

### **Appeal A - Ref: APP/J1725/W/20/3265860** **Land East of Newgate Lane East, Fareham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Bargate Homes Ltd against the decision of Gosport Borough Council.
  - The application Ref 19/00516/OUT, dated 27 November 2019, was refused by notice dated 27 July 2020.
  - The development proposed is described as cross boundary outline application, with all matters reserved except for access, for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane (part of access in Gosport Borough).
- 

### **Appeal B - Ref: APP/A1720/W/21/3269030** **Land East of Newgate Lane East, Fareham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd against Fareham Borough Council.
  - The application Ref P/19/1260/OA, is dated 27 November 2019.
  - The development proposed is described as cross boundary outline application, with all matters reserved except for access, for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane (part of access in Gosport Borough).
- 

### **Decisions**

1. **Appeal A** is allowed and outline planning permission is granted for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane at Land East of Newgate Lane East, Fareham in accordance with the terms of the application, Ref 19/00516/OUT, dated 27 November 2019, subject to the conditions contained within the relevant Schedule at the end of this decision.
2. **Appeal B** is allowed and outline planning permission is granted for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane at Land East of Newgate Lane East, Fareham in accordance with the terms of the application, Ref P/19/1260/OA, dated 27 November 2019, subject to the conditions contained within the relevant Schedule at the end of this decision.

## **Preliminary Matters**

3. Although there are two planning applications and two pursuant appeals, they relate to a single proposed development at the same site. The two applications and appeals are a consequence of the site extending across the boundary of two different local planning authorities, those of Fareham Borough Council (FBC) and Gosport Borough Council (GBC). Roughly 98.3% of the 4.1ha site lies within Fareham Borough, with the remaining portion standing within Gosport Borough.
4. Appeal A was made following GBC's decision to refuse planning permission. Appeal B was made some time later but before FBC had determined that planning application. FBC has subsequently resolved that had this appeal not been made it too would have refused planning permission. In light of the submission of two legal agreements made under section 106 of the Town and Country Planning Act 1990 (as amended) both dated 6 July 2021 (the Planning Obligations), FBC has confirmed its putative reasons for refusal (f) to (n) inclusive have now been satisfactorily addressed.
5. Both appeal applications are for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the appeals scheme, I have treated the submitted details relating to these reserved matters as a guide as to how the site might be developed.
6. After the hearing closed and before the decision was issued, a revised version of the National Planning Policy Framework (the Framework) was published. I gave the appellant, FBC and GBC each the opportunity to comment in response to its publication and I have taken into account any resulting submissions when making my decision.

## **Main Issues**

7. In view of the foregoing matters, the main issues are:
  - Whether the proposed development would conflict with the area's adopted strategy for the location of new housing;
  - Its effect on the character and appearance of the area, including in terms of the 'Strategic Gap'; and
  - Its effect on best and most versatile agricultural land.

## **Reasons**

### *Strategy for the Location of New Housing*

8. The strategy for the location of new development in Fareham Borough, including housing, is set out in the development plan for the Borough<sup>1</sup>, notably for the purposes of these appeals in Policies CS2 (Housing Provision), Policy CS6 (The Development Strategy), CS14 (Development Outside Settlements) and CS22 (Development in Strategic Gaps) of the Fareham Local Development Framework Core Strategy 2011 (the LP1), and Policies DSP6 (Residential development outside settlement boundaries) and DSP40 (Housing Allocations) of the Fareham Local Plan Part 2: Development Sites and Policies Plan (the LP2).

---

<sup>1</sup> No development plan conflict in respect to Gosport Borough has been suggested by the main parties and I have found none

9. PL1 Policy CS2 states that, in delivering housing, priority should be given to the reuse of previously developed land within the urban areas, while Policy CS6 states that development will be focussed in a series of identified development areas, including within existing settlements and at strategic allocations. Although the appeals site abuts the settlement edge of Bridgemary, Gosport, it is farmland located in the countryside beyond any designated settlement boundary.
10. It is within such out-of-settlement locations that LP1 Policy CS14 states that development will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Similarly, LP2 Policy DSP6 has a presumption against new residential development outside the defined urban settlement boundaries. While these Policies do allow for some forms of development they are limited in scale and kind, and do not include new housing of the type proposed.
11. The site is also within the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (the Strategic Gap), which LP1 Policy CS22 states will be treated as countryside where development will not be permitted either individually or cumulatively where it significantly affects the integrity of the Gap and the physical and visual separation of settlements.
12. Consequently, the appeals proposals are at odds with Fareham Borough's strategy for the location of new housing in terms of its relationship with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6. Nonetheless, in circumstances where FBC cannot demonstrate a five-year supply of deliverable housing sites, as is currently the case, LP2 Policy DSP40 provides that additional sites for housing outside the urban area boundary, within the countryside and strategic gaps, may be permitted where they meet a number of criteria.
13. It is common ground between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:
  - ii. Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;
  - iii. Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and
  - v. Would not have any unacceptable environmental ... implications.
14. I deal with each of these criteria of LP2 Policy DSP40, along with LP1 Policies CS14, CS17 (High Quality Design) and CS22 principally in the following subsection concerning character and appearance<sup>2</sup>. Before doing so, it is worth taking a moment to consider the relationship Policy DSP40 has with the other development plan policies cited above as well as the weight they currently carry.
15. The criteria of DSP40 offer flexibility and are not as restrictive as the requirements of those other policies, including CS14, CS22 and DSP6. As another Inspector recently concluded when considering two other nearby

---

<sup>2</sup> Criterion (v) is dealt with in the subsequent subsection in respect to best and most versatile agricultural land

appeals<sup>3</sup> (the Peel Common Inspector), *it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies [LP1 Policies CS14 and CS22 and LP2 Policy DSP6] would be reduced and would be outweighed by compliance with LP2 Policy DSP40.*

16. That Inspector went on to identify that, because the LP1 pre-dates the Framework, Policy CS2 does not represent an up-to-date Framework compliant assessment of housing needs, nor has the housing requirement of the development plan been reviewed within the last 5 years, and applying the Standard Methodology generates a higher housing need figure. In these circumstances, I agree with his conclusion that LP1 Policies CS2 and CS6 are out-of-date in the terms of the Framework and that against this background, the weight attributable to conflicts with Policies CS14 and CS22 of the LP1 and LP2 Policy DSP6 is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements. I return to matters of weight in the Planning Balance section later in my decision.

#### *Character & Appearance*

17. The appeals site is mainly made up of two fairly flat arable fields, separated by a hedgerow. It also includes a small part of Brookers Lane to its southeast, where a new vehicular access is proposed that would link the developed site to the predominantly residential area of Bridgemary to the east, which has a pleasant, if unremarkable suburban character and appearance.
18. Although it is a conventional residential street to the east, to the south of the site Brookers Lane is not accessible to powered vehicles and is lined on both sides by reasonably mature thick planting, which help give it a more rural character in contrast to the suburban feel in Bridgemary. A recreation ground lies to its south, opposite the appeals site.
19. Newgate Lane East, a fairly recently constructed 'relief road', runs immediately to the west of the site. It bypasses the small settlement of Peel Common and Old Newgate Lane to its west, allowing more direct movement between Fareham and Gosport through the Strategic Gap. A substantial timber acoustic fence and new hedgerow/tree planting largely separate the site from the new road. Although there is a break in the fence to accommodate access to the northern field, views into the site from Newgate Lane East to the west and south are very largely obstructed by the fence.
20. The acoustic fence ends towards the site's northern boundary, such that fairly open views are available from Newgate Lane East to the north of the site. These views extend across the site to the backdrop of mature planting to the site's eastern boundary, and also offer filtered glimpses of the dwellings beyond on the western fringes of Bridgemary and of Woodcot, the suburb to the north. Immediately to the north of the site there is further farmland, beyond which lies the playing fields of HMS Collingwood.
21. Consequently, the site has a reasonably strong relationship with the adjoining urban area to the east, while the surrounding landscape is influenced by manifestations of the nearby urban uses, including the relief road, recreation ground and playing fields. Nonetheless, the site reads very much as a part of

---

<sup>3</sup> Appeal Refs APP/A1720/W/20/3252180 & 3252185

- the farmed countryside between Peel Common and Bridgemary/Woodcot through which Newgate Lane East passes, which has a predominantly open rural character and appearance. That the site is undeveloped also contributes to the sense of openness and separation within the Strategic Gap.
22. All three main parties have submitted evidence, including their contributions to the discussion at the hearing, regarding the proposed development's potential effects on the character and appearance of the area, including in terms of the Strategic Gap. This evidence included reasonably detailed assessments of landscape and visual impact produced for FBC and the appellant. I have taken all of this evidence into account, along with what I observed when I visited the area. Having done so, while I do not entirely agree with all of FBC's evidence on this matter, the assessment and conclusions contained in the Lockhart Garratt Statement of Evidence document produced for FBC more closely align with my own conclusions than do those of the appellant.
  23. Of particular relevance to my assessment in this regard is the rather uncharacteristic extent to which the settlement edge of Bridgemary/Woodcot would protrude westward into the countryside as a result of the development and the degree to which this would be experienced in the area surrounding the site, particularly from the north along Newgate Lane East and from Brookers Lane to the south.
  24. Consequently, the appeals development would have a harmful effect on the character and appearance of the area contrary to LP1 Policies CS14 and CS17. Nonetheless, such harm does not necessarily lead to conflict with criteria (ii) or (iii) of Policy DSP40 of the LP2 and there is also the effect on the Strategic Gap to consider.
  25. It is common ground that the appeals site is well located in terms of its proximity to services and facilities, and its eastern boundary is adjacent to Bridgemary/Woodcot. Moreover, with careful consideration of the reserved matters, I see no reason why the appeals development would not be well integrated with the neighbouring settlement in a functional sense. Consequently, in those respects it accords with criterion (ii) of Policy DSP40.
  26. However, I also see no reason why criterion (ii) should not also be considered from a landscape and visual perspective. Consequently, for the landscape and visual impact assessment reasons outlined above, particularly given the extent to which it would project from the existing settlement boundary out into the countryside, the proposed development could not be said to be well related to the existing settlement boundary and well integrated with the neighbouring settlement in the terms of Policy DSP40 (ii).
  27. Policy DSP40 (iii) requires that proposals are sensitively designed to reflect the character of the neighbouring settlement and any adverse impact on the countryside and / or the Strategic Gap to be minimised. Notwithstanding the issues I have outlined above, I see no reason why the reserved matters could not result in a detailed design that reasonably reflects the character of Bridgemary/Woodcot provided that the development is limited to dwellings of no more than two storeys, given the prevailing scale of development in those neighbouring suburbs<sup>4</sup>.

---

<sup>4</sup> I make this particular point regarding the number of storeys given that the illustrative material that accompanied the planning applications, including the Design and Access Statement, refer to 2½ storey elements

28. Regarding the interpretation of 'minimise' in the context of criterion (iii), I note what the Peel Common Inspector recently wrote on the matter. In summary, he explained that the aim of Policy DSP40 is to facilitate housing in the countryside relative in scale to the five-year housing land supply shortfall, and went on to say that any new housing in the countryside would be likely to register some adverse landscape and visual effect such that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as location, scale, disposition and landscape treatment. I broadly agree with his approach because otherwise the Policy would be likely to become self-defeating in terms of failing to reasonably respond to a housing delivery shortfall which it is, in part, designed to address.
29. Given the extent to which the proposed development would extend into the countryside and the Strategic Gap, particularly in the northwest portion of the site where it would be most removed from the existing settlement boundary and most discernible when experienced from the north along Newgate Lane East, the identified adverse effects on the character and appearance of the area would not be minimised in the terms of the Policy. Consequently, the appeals development would also conflict with Policy DSP40 (iii) in that regard.
30. Beyond its effect in the context of Policy DSP40, there remains the scheme's effect on the Strategic Gap, particularly in terms of LP1 Policy CS22. In summary and insofar as it applies to the appeals development, Policy CS22 prevents development that would either individually or cumulatively significantly affect the integrity of the Gap and the physical and visual separation of settlements.
31. Given the relatively modest size of the development proposed relative to the overall scale of the Strategic Gap along with the site's location on the outer edge of the Gap adjacent to the settlement boundary, there would not be a significant effect on the integrity of the Gap, be it individually or cumulatively. Nor would the built form extend fully to the settlement to the west, maintaining a degree of separation such that coalescence would not occur. Consequently, Peel Common would continue to be understood as mostly comprising a small, isolated ribbon of development.
32. The development would, however, reduce the physical and visual separation between Peel Common and Bridgemary/Woodcot at roughly its most narrow point. This effect would be mitigated to an extent by the proposed setting back of the built form, away from the western boundary thereby leaving a modest gap to the side of Newgate Lane East, and by the visually contained nature of the southern part of the site resulting from the existing planting around its southern boundary and the acoustic fence along the relief road. Nonetheless, due to the extent of narrowing at this already fairly narrow point between settlements, the effect of the appeals development on the physical and visual separation of settlements would be reasonably significant. In this respect it would conflict with Policy CS22 of the LP1.
33. In summary therefore, the proposed development would harm the character and appearance of the area, including in terms of the Strategic Gap, contrary, in that regard and to the extents identified, to LP1 Policies CS14, CS17 and CS22 and PL2 Policy DSP40 (ii) and (iii).

### *Agricultural Land*

34. Approximately 76% of the site is made up of Grade 3a agricultural land, which is identified as being 'best and most versatile' (BMV). As this land would be lost as a result of the appeals development, it would also be contrary to LP1 Policy CS16 insofar as it seeks to prevent the loss of such land. Nonetheless, given the large amount of BMV land in Fareham Borough relative to the comparatively small amount that would be lost, its loss would not represent an *unacceptable environmental implication* in the terms of LP2 Policy DSP40 (v).

### **Other Matters**

#### *Planning Obligations*

35. In the event that planning permissions were to be granted and implemented the Planning Obligations would secure the provision of on-site affordable housing at a rate of 40%, and of open space and a play area along with measures for their future maintenance; payments towards education provision, pedestrian/cycling improvements at the Brookers Lane crossing of Newgate Lane East, safety improvements at Brookers Lane/Tukes Avenue/Carisbrooke Road, local accessibility improvements on routes to Woodcot Primary School and Tukes Avenue Local Centre, Holbrook Primary School and Bridgemary School and Nobes Avenue Local Centre, and parking restrictions on Brookers Lane in the vicinity of the site access; measures to secure and support the implementation of a Travel Plan; footway widening works to support pedestrian access to Peel Common Nursery, Infant School and Junior School; and measures to mitigate the effects on European Sites, as discussed in the following subsection.
36. FBC has submitted a detailed statement (the CIL Statement), which addresses the application of statutory requirements to most of the Planning Obligations and also sets out the relevant planning policy support / justification. I have considered the Planning Obligations in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the policies set out in the CIL Statement. Overall, I am satisfied that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

#### *Appropriate Assessment*

37. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority I am required to undertake an Appropriate Assessment of the appeals development on the basis of its Likely Significant Effects on European Sites in respect to:
- Loss of functionally linked habitat (alone and in-combination);
  - Nutrient outputs during occupation (alone and in-combination); and
  - Recreational disturbance during occupation (alone and in-combination).
38. A suite of mitigation is proposed to address these effects, which following consultation with Natural England I consider would adequately mitigate the

effects of the proposal so that there would be no adverse effect upon the integrity of any European Sites. Moreover, the mitigation would be secured and managed via a combination of the Planning Obligations, as outlined above, and of planning conditions.

39. In summary, the mitigation measures would include:

- Contribution to the Solent Recreation Mitigation Strategy, to be secured by planning obligations;
- The implementation of a Construction Environmental Management Plan, to be secured via planning condition;
- A planning condition to cap water consumption to a maximum of 110 litres per person per day and open space management to ensure the development will not result in a positive nitrogen output; and
- Implementation of a Wintering Bird Mitigation Strategy to achieve favourable management of off-site land in respect of Brent Geese and Waders, to be secured by planning obligations.

#### *Other Considerations*

40. In addition to the decision letter referred to above concerning two recently determined appeals at land to the west of Newgate Lane East, the evidence refers to a range of decision letters in respect to other planning appeals as well as to other planning decisions made locally. I am mindful of the need for consistency in decision making, particularly in respect to appeals casework. Nonetheless, while I am not familiar with all of the circumstances of those other cases, they do appear to differ in notable respects to the appeals development. Moreover, each application for planning permission must be determined on its individual merits. Consequently, none of those other cases have had a significant bearing on my decision.
41. In addition to the main issues, concern has been expressed locally including in respect to there being adequate other sources of housing without this development; setting a precedent for other development, including in the Strategic Gap; infrastructure, services and facilities as existing and proposed, including an unfair impact on Gosport as Council Tax from residents of the development would go to FBC; highway safety, access arrangements, congestion, rat-running, car-dependency and parking; living conditions in the area, including in respect to air quality, noise, light pollution, loss of light and privacy; the effects of the development on security, biodiversity, climate change, health / well-being, and the local economy including on the Solent Enterprise Zone; availability of employment opportunities; drainage and flooding; design and layout; the affordability of the proposed housing; the cumulative effect of the development with other development; the site should be put to a community use and/or become a woodland; and it would be prejudicial to and premature in terms of the development plan-making process.
42. These matters are largely identified and considered within the FBC officer's report on the appeals development. They were also before FBC when it prepared its evidence and when it submitted its case at the hearing and are largely addressed in its evidence and in the statements of common ground. Other than as set out above, although GBC took a somewhat broader approach to its objections, FBC as the local planning authority responsible for over 98% of the site did not conclude that they would amount to reasons to justify

withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with FBC's conclusions in these respects subject to the Planning Obligations and the imposition of planning conditions.

43. I also note that representations have been made in support of the proposed scheme. While I have also taken them into account, they have not altered my overall decision on either appeal.

### **Planning Balance**

44. For the reasons outlined above, the appeals development would be at odds with the area's adopted strategy for the location of new housing, including in terms of LP2 Policy DSP40 (ii) and (iii), cause harm to the character and appearance of the area, including in terms of the Strategic Gap, and lead to the loss of BMV land. As a consequence, it conflicts in these respects with LP1 Policies CS2, CS6, CS14, CS16, CS17 and CS22, and LP2 Policies DSP6 and DSP40.
45. FBC cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, FBC and the appellant agree that supply lies in the range of 0.95 to 3.57 years. Although it seems likely to be lower based on the evidence before me, I have used FBC's figure of 3.57 years as a benchmark to assist in making my decision. On that basis, the fact that the appeals development would be at odds with the area's strategy for the location of new housing and conflict, in that regard, with the development plan, including with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6, currently carries limited weight.
46. Although the weight attributable to the wider conflicts with LP1 Policies CS14 and CS22 is reduced, there would nonetheless be harm caused to the character and appearance of the area, including in terms of the Strategic Gap. LP2 Policy DSP40 criteria (ii) and (iii), however, carry greater weight, albeit that the evidence indicates that the balance they strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the housing supply shortfall has persisted for a number of years in spite of this Policy. For the purposes of making my decision I have treated PL1 Policy CS17 as carrying full weight.
47. On this basis, given the extent of harm identified in the relevant subsection above, the detrimental effect that the appeals development would have on the character and appearance of the area, including in terms of the Strategic Gap, and the associated development plan policy conflict carry significant weight against the appeals proposals.
48. In respect to BMV land, the evidence indicates that Fareham Borough has a large amount of such land. Accordingly, given the comparatively small amount of BMV land within the site, its loss and the associated development plan conflict carry no more than limited weight.
49. Further to the absence of a five years' supply of housing land, the Local Plan, while aiming to plan for Fareham Borough's housing needs to 2026, predates the Framework such that it is out of step with the current housing requirement for the area. While there has been much activity in terms of attempting to

bring forward a replacement Local Plan, including the recent publication of a Regulation 19 consultation Plan, there can be no certainty regarding when a replacement Plan might be adopted.

50. In these circumstances, the so-called tilted balance, as set out in para 11 of the Framework, applies to the determination of planning applications. It provides that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
51. The appeals development would bring a range of benefits, most notably the delivery of a reasonably substantial amount of housing<sup>5</sup> in an accessible location with good access to a range of services and facilities. In the context of the area's current issues with housing delivery, the benefits together carry, at the least, considerable weight in favour of the appeals development.
52. The harm to the character and appearance of the area, including in terms of the Strategic Gap, and the associated development plan policy conflict carry significant weight. Nonetheless, when combined with the more limited weight carried by the other matters that weigh against the appeals development, the collective weight of the adverse impacts would not significantly and demonstrably outweigh the considerable benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, while perhaps not an ideal form of development, it would be sustainable development in the terms of the Framework for which there is a presumption in its favour, such that the site is a suitable location for housing.

### **Conditions**

53. The two main Statements of Common Ground between each Council and the appellant contain a list of suggested conditions for each appeal. They include the standard time limit / implementation conditions. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.

#### *Appeal B - Conditions*

54. In order to provide certainty in respect to the matters that would not be reserved for future consideration, a condition requiring that the development would be carried out in accordance with the approved plans would be necessary. For that reason and to protect the character and appearance of the area, a condition limiting the number of dwellings permitted would also be necessary as would a condition to ensure that the development proceeds in general conformity with the illustrative masterplan.
55. Conditions to control the formation of the proposed access and associated works would be necessary in the interests of highways safety and to ensure that the development would be served by an appropriate means of access. A condition to limit the maximum height of the proposed dwellings to two-storeys would be necessary to ensure that the development remains consistent with

---

<sup>5</sup> I note that it is the appellant's intention to develop the site as a 100% affordable housing scheme. Nonetheless, as 40% only would be secured as affordable housing via the Planning Obligations, there can be no guarantee that more than 40% would be delivered as part of the development. I have, therefore, assessed the scheme on that basis

- the character of Bridgemaury/Woodcot and to limit its prominence, particularly when experienced from the north in order to protect the character and appearance of the area.
56. Conditions would be necessary to secure biodiversity and arboricultural mitigation to protect the character and appearance of the area, as well as wildlife and their habitat. Conditions to control the details of surface and foul water drainage, would also be necessary to reduce flood risk, to control surface water run-off and in the interests of public health. A condition would also be necessary to ensure that features of archaeological interest would be properly examined, recorded and, where necessary, preserved.
57. A condition requiring adequate remediation of any contamination affecting the site would be necessary to safeguard the health and well-being of future occupiers. A condition would also be necessary to ensure that the living conditions of occupiers of the development would not be unacceptably affected by noise. In the interests of highway safety, to safeguard residents' living conditions and to protect wildlife and their habitat, a condition would also be necessary to ensure that the construction works proceed in accordance with a Construction Environmental Management Statement.
58. A condition to control site levels, including ground floor levels of the permitted buildings, would be necessary to help the development harmonise with its context. To promote sustainable modes of transport, a condition to secure the installation of charging points for electric vehicles would be necessary. As outlined above, a condition to limit water consumption per resident per day would be necessary in the interests of biodiversity. To help the creation of a mixed and sustainable community, a condition would be necessary to control lettings of any affordable housing to be provided on-site beyond the 40% that would be secured via the Planning Obligations.

#### *Appeal A - Conditions*

59. Again, in order to provide certainty in respect to the matters that would not be reserved for future consideration, a condition requiring that the development would be carried out in accordance with the approved plans would be necessary. In the interests of highway safety, to safeguard residents' living conditions and to protect wildlife and their habitat, a condition would also be necessary to ensure that the construction works proceed in accordance with a Construction, Transport and Environment Management Plan.
60. A condition would also be necessary to ensure that features of archaeological interest would be properly examined, recorded and, where necessary, preserved. A condition would be necessary to secure arboricultural mitigation, to protect the character and appearance of the area, and wildlife and their habitat. A condition to secure the re-provision of on-street parking spaces, would also be necessary to ensure adequate parking facilities would be provided and in the interests of highway safety.

#### **Conclusion**

61. In conclusion, the proposed development would be at odds with the area's strategy for the location of new housing, cause significant harm to the character and appearance of the area, including in terms of the Strategic Gap, and lead to the loss of BMV land in conflict with the development plan.

However, in the current circumstances the combined adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. On that basis, the appeals scheme would represent sustainable development in the terms of the Framework, which is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole.

62. Accordingly, subject to the identified conditions, **Appeals A and B are allowed.**

*G D Jones*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Christopher Boyle	Of Queen's Counsel
Trevor Moody	Planning - Pegasus Group
Jeremy Gardiner	Planning - Pegasus Group
James Atkin	Landscape - Pegasus Group
Tom Alder	Solicitor - Lester Aldridge LLB

### **FOR GOSPORT BOROUGH COUNCIL:**

Mark Bridge	Development Management, GBC
Jayson Grygiel	Planning Policy, GBC

### **FOR FAREHAM BOROUGH COUNCIL:**

Jane Parker	Planning - Adams Hendry Consulting Limited
Ian Dudley	Landscape - Lockhart Garratt Ltd

### **INTERESTED PERSONS:**

Alison Roast	Lee Residents' Association
Cllr Stephen Philpott	Gosport Borough & Hampshire County Councillor
Bob Marshall	Fareham Society

**APPEAL A - REF APP/J1725/W/20/3265860 - SCHEDULE OF CONDITIONS:**

- 1) The development hereby permitted shall be begun either before the expiration of three years from the date of the grant of this Outline planning permission, or the expiration of two years from the final approval of the Reserved Matters, or in the case of approval on different dates, the final approval of the last such Matter to be approved whichever is the later date.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SLP-01 Rev D; ITB13747-GA-004 Rev F.
- 3) a) No development hereby permitted shall commence until a Construction, Transport and Environment Management Plan, to include (but not be limited to) details of: a method statement for control of dust and emissions from construction and demolition; an assessment and method statement for the control of construction noise for the site specifying predicted noise levels, proposed target criteria, mitigation measures and monitoring protocols, working hours, the timing of deliveries; the provision to be made on site for contractor's parking, construction compound, site office facilities, construction traffic access, the turning and loading/off-loading of delivery vehicles within the confines of the site, wheel wash facilities, lorry routeing from the strategic road network and a programme of works, has been submitted to and approved in writing by the Local Planning Authority.  
  
b) The development shall be carried out in accordance with the approved Construction, Transport and Environment Management Plan for as long as construction is taking place at the site.
- 4) a) Development shall not commence until:
  - i) A Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority; and
  - ii) The implementation of a programme of archaeological assessment and mitigation in accordance with the Written Scheme of Investigation approved pursuant to part a) i) of this condition has been approved in writing by the Local Planning Authority and has been secured.  
b) The development shall, unless otherwise approved in writing by the Local Planning Authority, be carried out in accordance with the approved programme of archaeological assessment and mitigation.  
  
c) The development shall, unless otherwise approved in writing by the Local Planning Authority, not be occupied until a report interpreting the results of the archaeological fieldwork has been produced in accordance with an approved programme, including where appropriate post-excavation assessment, specialist analysis and reports, publication and public engagement.
- 5) a) Development shall not commence until the tree protection measures set out in Arboricultural Assessment & Method Statement (Barrell Tree Consultancy, 27 November 2019 (19225-AA3-DC)) and identified on Tree Protection Plan 19225-BT3 have been provided.  
  
b) The tree protection measures shall be retained until the development is substantially complete, or their removal is approved in writing by the Local Planning Authority.

- 6)
  - a) The access hereby permitted shall not be brought into use by residential traffic, until alternative parking spaces to replace those lost on Brookers Lane have been provided in accordance with a detailed scheme that shall have been submitted to and approved in writing by the Local Planning Authority.
  - b) The replacement parking spaces shall be retained for public use thereafter.

**APPEAL B - REF APP/A1720/W/21/3269030 - SCHEDULE OF CONDITIONS:**

- 1) Reserved matters Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

The reserved matters shall include the provision of five publicly available parking spaces to be maintained in perpetuity by the developer (unless dedicated as public highway) in the area highlighted yellow on Image 2.1 in the Technical Note (SJ/MC/GT/ITB13747-010): Additional transport information note dated 13 May 2020).

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission. The development hereby permitted shall commence not later than one year from the date of approval of the last of the reserved matters.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: SLP-01 Rev D; ITB13747-GA-004 Rev F.
- 4) No development shall commence on site until an amendment to The Hampshire (Various Roads Newgate Lane Area, Fareham and Gosport) (Prohibition of Driving) (Except for Access) Order 2018 has been approved in accordance with drawing ITB13747-GA-018 Rev A to allow vehicular access to the site. The development thereafter shall not commence until the access has been constructed in accordance with plan No ITB13747-GA-004 Rev F or a subsequent plan approved in writing by the Local Planning Authority (LPA), and made available for use unless an alternative construction access arrangement has been approved in writing by the LPA and has been implemented. Where an alternative construction access arrangement has been approved by the LPA, the development may commence, but shall not be occupied prior to completion of the access in accordance with drawing ITB13747-GA-004 Rev F.
- 5) The development hereby permitted shall be carried out in general accordance with plan Ref CMP-01 Rev C and shall include:
  - a) Two pedestrian and cycling links at the southern boundary of the site to the Brookers Lane cycle link in the vicinity of the existing pedestrian accesses to Brookers Lane Playing fields;
  - b) A suitable and direct internal path linking the north of the application site to the vehicular site access via the eastern boundary of the site;
  - c) A pedestrian and/or cycle link to Heron Way to the east of the site;
  - d) A single point of vehicular access to the development via Brookers Lane. No alternative or additional vehicular access points or links shall be provided. The internal site layout shall be designed to restrict the potential for any alternative or additional vehicular access points or links; and
  - e) Suitable land up to the site boundary safeguarded for pedestrian and cycle only connections to the north as shown indicatively on masterplan drawing CMP-01 Rev C, only to be implemented should development on land to the

north come forward. This land shall be dedicated as public highway if practicable.

In the event that the pedestrian and cycle only connections, as set out in e) above, are required to be implemented, plans shall be submitted to and approved in writing by the Local Planning Authority to upgrade (surface and light) the pedestrian and cycle only connections to the north. Construction of the pedestrian and cycle only connections shall be completed within 6 months of approval of the plans. The pedestrian and cycle only connections shall be available for public use in perpetuity and maintained by the developer in perpetuity (unless dedicated as public highway).

Details of a) – e) to be approved at the reserved matters stage and the development shall be carried out as approved.

- 6) Notwithstanding the illustrative parameter details submitted with the planning application, including the Design and Access Statement, the buildings hereby permitted shall be limited to no more than two storeys.
- 7) The development hereby permitted shall not exceed 99 dwellings.
- 8) None of the dwellings hereby permitted shall be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved LEMP (unless otherwise approved in writing by the Local Planning Authority) which shall include (but shall not necessarily be limited to):
  - a) A description, plan and evaluation of ecological features to be retained, created and managed such as grasslands, hedgerows, attenuation ponds and treelines;
  - b) Details of a scheme of lighting designed to minimise impacts on wildlife, in particular bats, during the operational life of the development;
  - c) A planting scheme for ecology mitigation areas;
  - d) A work schedule (including an annual work plan);
  - e) The aims and objectives of landscape and ecological management;
  - f) Appropriate management options for achieving aims and objectives;
  - g) Details of the persons, body or organisation responsible for implementation of the plan; and
  - h) Details of a scheme of ongoing monitoring and remedial measures where appropriate.
- 9) No development hereby permitted shall commence until a detailed surface water drainage strategy for the site, based on the principles within the Flood Risk Assessment, has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following details:
  - a) Updated surface run-off calculations for rate and volume for pre and post development using the appropriate methodology;

- b) The detailed design of Sustainable Drainage Systems (SuDS) to be used on the site in accordance with best practice and the CIRIA SuDS Manual C753 as well as details on the delivery, maintenance and adoption of those SuDS features;
- c) Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients;
- d) Detailed hydraulic calculations for all rainfall events, including those listed below. The hydraulic calculations shall take into account the connectivity of the entire drainage system, including the connection with the watercourse. The results shall include design and simulation criteria, network design and result tables, manholes schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features shall have the same reference as the drainage layout;
- e) Evidence that runoff exceeding design criteria has been considered. Calculations and exceedance flow diagram/plans shall show where above ground flooding might occur and where this would pool and flow;
- f) Evidence that Urban Creep has been considered in the application and that a 10% increase in impermeable area has been used in calculations to account for this;
- g) Information evidencing that the correct level of water treatment exists in the system in accordance with the CIRIA SuDS Manual C753; and
- h) The condition of the existing watercourse(s) within the application site shall be investigated and any required improvement shall be carried out. Evidence of this, including photographs shall be submitted before any connection is made.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be approved in writing by the Local Planning Authority.

- 10) Prior to commencement, details of the maintenance and management of the sustainable drainage scheme approved by Condition 9 shall be submitted to and approved in writing by the Local Planning Authority. Those details shall include a timetable for its implementation, and a management and maintenance plan, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime. The sustainable drainage system shall be managed and maintained in accordance with the approved details for the lifetime of the development.
- 11) Prior to commencement, a scheme for the disposal of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. This shall include a timetable for implementation and details of the measures which shall be undertaken to protect the public sewers and shall be carried out in accordance with the approved scheme.

- 12) Prior to commencement, the developer shall secure the implementation of a programme of archaeological assessment in accordance with a Written Scheme of Investigation that has been submitted to and approved in writing by the Local Planning Authority. The assessment shall take the form of trial trenches located across the site to ensure that any archaeological remains encountered within the site are recognised, characterised and recorded. Prior to commencement, the developer shall secure the implementation of a programme of archaeological mitigation based on the results of the trial trenching, in accordance with a Written Scheme of Investigation that has been submitted to and approved in writing by the Local Planning Authority. Following completion of archaeological fieldwork, a report shall be produced in accordance with the approved programme submitted by the developer and approved in writing by the Local Planning Authority setting out and securing post-excavation assessment, specialist analysis and reports, publication and public engagement.
- 13) Prior to commencement, a detailed Arboricultural Impact Assessment and Tree Protection Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The arboricultural works shall be carried out in accordance with the approved details and may only be fully discharged subject to satisfactory written evidence of contemporaneous supervision and monitoring of tree protection throughout construction by the appointed arboriculturist.
- 14) Development shall cease on the site, if during any stage of the works, unexpected ground conditions or materials which suggest potential contamination are encountered, unless otherwise approved in writing by the Local Planning Authority. Works shall not recommence before an investigation and risk assessment of the identified material/ground conditions has been undertaken and details of the findings along with a detailed remedial scheme, if required, has been submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall be fully implemented and shall be validated in writing by an independent competent person as approved in writing by the Local Planning Authority prior to the occupation of the unit(s).
- 15) The reserved matters to be submitted pursuant to Condition 1 shall be accompanied by a Noise Mitigation Scheme following the principles established in the Noise Assessment (November 2019) prepared by WYG including how mitigation shall be maintained for the lifetime of the development. Prior to the construction of any dwelling, the submitted Scheme shall have been approved in writing by the Local Planning Authority and no dwelling shall be first occupied until the relevant mitigation measures in respect of that dwelling have been provided in full, in accordance with the approved Scheme. The mitigation measures shall thereafter be retained at all times unless otherwise approved in writing by the Local Planning Authority.
- 16) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide for:
  - a) The parking of vehicles of site operatives and visitors and turning provision on the site;
  - b) Loading and unloading of plant and materials;

- c) The routing of lorries, including restriction of the use of The Drive, Gosport and details for construction traffic access to the site;
- d) Programme of construction;
- e) Storage of plant and materials used in constructing the development;
- f) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- g) Wheel washing facilities including measures for cleaning Brookers Lane to ensure that it is kept clear of any mud or other debris falling from construction vehicles;
- h) Measures to control the emission of dust and dirt during construction;
- i) Delivery and construction working hours;
- j) A method for ensuring that minerals that can be viably recovered during the development operations are recovered and put to beneficial use;
- k) A scheme of work detailing the extent and type of piling proposed;
- l) Protection of pedestrian routes on Brookers Lane during construction;
- m) Temporary lighting;
- n) A construction-phase drainage system which ensures all surface water passes through three stages of filtration to prevent pollutants from leaving the site; and
- n) Safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 17) No development shall commence until details of the internal finished floor levels of all of the proposed buildings and proposed finished external ground levels in relation to the existing ground levels on the site and the adjacent land have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 18) No development shall take place beyond damp proof course level until details of the specification of Electric Vehicle charging points have been submitted to and approved in writing by the Local Planning Authority, including how and where Electric Vehicle charging points shall be provided at the following level:
  - a) At least one Electric Vehicle charging point per dwelling with allocated parking provision; and
  - b) At least one Electric Vehicle charging point in shared/unallocated parking areas per 10 dwellings with no allocated parking provision. The development shall be carried out in accordance with the approved details with the charging point(s) provided prior to first occupation of the dwelling to which it serves.

- 19) No development shall commence until details of water efficiency measures to be installed in each dwelling have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures shall be designed to ensure potable water consumption does not exceed a maximum of 110 litres per person per day. The development shall be carried out in accordance with the approved details.
- 20) Any additional affordable housing to be provided on the site beyond the 40% identified as part of the s106 shall not be occupied until a community lettings plan has been approved in writing by the Local Planning Authority. Thereafter any additional affordable housing to be provided on the site beyond the 40% identified as part of the associated legal agreement made under section 106 of the Town and Country Planning Act 1990 (as amended) dated 6 July 2021 shall be occupied in accordance with the approved Community Lettings Plan.