

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

APPEALS by **Miller Homes Ltd and Bargate Homes Ltd** against the non-determination by **Fareham Borough Council** of *"Outline application with all matters reserved (except access) for residential development of up to 375 dwellings, access from Newgate Lane East, landscaping and other associated infrastructure works"* on **Land East of Newgate Lane East, Fareham**

Planning Inspectorate Reference: APP/A1720/W/22/3299739

Local Authority Reference: P/22/0165/OA

STATEMENT OF CASE OF FAREHAM BOROUGH COUNCIL

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1.0 Introduction

1.1 This Statement of Case relates to the appeal lodged by Miller Homes Ltd and Bargate Homes Ltd ('the Appellants') to the Planning Inspectorate ('PINS') on 25th May 2022 (PINS reference APP/A1720/W/22/3299739). The statement sets out the case for the local planning authority ('the LPA') Fareham Borough Council ('FBC' or 'the Council') in respect of the appeal which is made against the failure of the Council to determine planning application reference P/22/0165/OA on Land East of Newgate Lane East, Fareham within the prescribed time period.

1.2 The appeal development is:

"Outline planning application with all matters reserved (except access) for residential development of up to 375 dwellings, access from Newgate Lane East, landscaping and other associated infrastructure works."

1.3 The appeal will be determined by way of an inquiry scheduled to be heard over 8 days commencing on 11th October 2022.

1.4 Throughout this statement references made to documents appended to this statement are given the prefix "FBC".

2.0 The Appeal Sites and Its Immediate Surroundings

- 2.1 The land in question comprises approximately 20 hectares of arable and pastoral land located to the east of Newgate Lane East and west of the settlement edge of the Woodcot suburb of Gosport (the 'Site'). The entire Site is located within the Fareham-Stubbington Strategic Gap and within the designated countryside.
- 2.2 The Site exhibits a relatively level topography, sitting around 10m AOD. It forms part of the upper reaches of the Alver Valley, which is a broad, shallow valley that flows southwards to The Solent.
- 2.3 The southern part of the Site consists of arable land, divided into three land parcels by two clipped hedgerows with ditches aligned in an approximate north-south direction. The eastern hedgerow contains two mature trees, whilst none are present within the western hedgerow.
- 2.4 A treed hedgerow divides the southern and northern parts of the Site. The northern part comprises open pastoral grassland with some encroachment of ruderal vegetation.
- 2.5 With the exception of the hedgerows, there are no internal features within the Site.
- 2.6 Directly to the east of the Site is the urban edge of Woodcot, which is marked by a characteristic line of mature oak trees with fencing and an intermittent hedgerow underneath that currently provides a strongly defined settlement boundary. A service road follows the western edge of the existing settlement, providing access to garages at the rear of properties. The dwellings on the settlement edge are arranged in a linear pattern, forming a continuous line of terraced and semi-detached dwellings of a mid-20th Century character with a combination of bare brick and rendered walls and hipped tile roofs, and with their rear aspects facing towards the Site.
- 2.7 To the south of the Site lies an area of currently open arable land, in which the Applicant has secured outline planning permission on appeal for up to 99 affordable dwellings and associated uses. A Reserved Matters application (LPA reference P/22/0841/RM) is currently being considered by the Council. The boundary with this land is relatively open and demarked by an agricultural ditch, with three trees and a short length of hedgerow at its western end. Beyond this land lies the treed corridor of Brookers

Lane, a pedestrian and cycle connection across the valley, and further south is Brookers Field Recreation Ground.

- 2.8 To the south and west of the Site, beyond the Newgate Lane East highway corridor, is an area of open arable land of similar character to the Site, which would have formed a continuous agricultural unit prior to the construction of Newgate Lane East. This land was subject to a dismissed appeal for residential development in 2021, on a number of grounds including landscape and encroachment within the Strategic Gap.
- 2.9 The southern part of the Site is bounded to the west by the corridor of the B3385 Newgate Lane East, a recently constructed single carriageway public highway. A newly planted hedgerow divides the Site from the highway, and a wide verge with drainage ditch is located between the hedgerow and carriageway.
- 2.10 Beyond Newgate Lane East, a narrow strip of land is encased between the new and old alignments of Newgate Lane, and a strip of ribbon development comprising residential dwellings and a nursing home is located on the western edge of Newgate Lane. Beyond this lies a substantial solar farm and a sewage treatment works contained by elevated and wooded bunds.
- 2.11 Further north and west of the Site, a series of formal sports pitches associated with HMS Collingwood separate the Site from Newgate Lane East, and beyond this to the north-west lies the built-up area of HMS Collingwood to the west of Newgate Lane and a commercial park to the east.
- 2.12 The northernmost boundary of the Site is formed by a public footpath (084/128/1) that connects Newgate Lane with Woodcot. Meadow Walk Recreation Ground is located to the north of this route, comprising a wedge of public open space with an equipped play area in its south-western corner.
- 2.13 The principal influences upon the character of the Site therefore comprise its open arable and pastoral land use as part of the remaining countryside of the Alver Valley, its relationship with built-up areas to the east and (imminently) south, and its relationship with more open parts of the valley to the west.

3.0 The Appeal Proposals

- 3.1 Outline planning permission is sought for the construction of up to 375 homes comprising a mixture of two, three and four bed dwellings and associated infrastructure, open space, landscaping and access. All matters are reserved except for the means of access.
- 3.2 The scheme proposes the creation of an ICD roundabout vehicular access into the site from Newgate Lane East. The submitted drawing (drawing no. ITB10353-GA-102 Rev C) shows the proposed access arrangements with a four-arm roundabout.
- 3.3 Matters of scale, appearance, layout and landscaping are to be reserved. The appellant has provided a concept masterplan setting out how the site could be laid out having regard to the established landscape features.
- 3.4 The plans show the developable areas of the site where housing and roads would be built. There are broadly three of these areas shown on the concept masterplan divided by what are referred to as "linear parks", SUDS, and rural edge green space around the perimeter. The housing within the developable areas would be two storey in scale .
- 3.5 A neighbourhood equipped area of play (NEAP) would be sited within the central green area of open space
- 3.6 Pedestrian and cycle links would be proposed on all boundaries, including to the public right of way that runs along the northern boundary of the site.

4.0 Background to the Appeal and putative reasons for refusal

- 4.1 The application, now the subject of this appeal, was made by the appellants in January 2022 (LPA reference P/22/0165/OA). An appeal (this appeal) was lodged on 25th May 2022 (APP/A1720/W/22/3299739), and on 15th June 2022 the Planning Committee considered a report in which Officers recommended the application be refused (**FBC1**). An Update report was also provided to the Committee (**FBC2**) which provided information from the post hearing letter from the Planning Inspector who is carrying out the examination of the Fareham Local Plan 2037. In summary, the published Committee Report reflects the consideration that the Council has an identified 5-year Housing Land Supply provision [5.08 years with the 0.8 years equating to 52 units), and accordingly applies the appropriate weight to the relevant policies of the adopted Local Plan, together with the implications of paragraph 182 of the NPPF regarding the impact on protected Habitat Sites. Whereas, the post hearing letter from the LP Inspector questioned the deliverability of the strategic Welborne site and made clear that completions should be pushed back a year. This removes 240 units from the 5yr supply, but with other recent permissions Officers considered that the Council could demonstrate a supply of 4.95 years – equating to a shortfall of 29 units. As a result LP3 Policy DSP40 was then engaged [see discussion on policy later].
- 4.2 Taking into consideration both reports, Members resolved that planning permission would have been refused had there still been the opportunity to determine the proposal (as the minutes of the 15th June 2022 Planning Committee meeting at **FBC3** show).
- 4.3 It was RESOLVED that, had members been able to determine the planning application, they would have resolved to REFUSE PLANNING PERMISSION for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17, CS18, CS20 and CS22 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 110 and 111 of the NPPF and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The application site lies outside of the defined urban settlement boundary within the open countryside. The proposed development would result in a range of significant adverse landscape and visual effects, harmful to the landscape character, appearance and*

- function of the countryside and failing to respect or respond positively to the key characteristics of the surrounding area;*
- c) The proposed development would physically and visually reduce the separation between settlements significantly adversely affecting the integrity of the Strategic Gap;*
 - d) The proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional nutrients entering the water environment of The Solent and the absence of appropriate and appropriately secured mitigation;*
 - e) In the absence of appropriate and appropriately secured mitigation, the proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional recreational disturbance arising from residents of the development;*
 - f) The proposal would have likely adverse effects upon the integrity of Habitat Sites and the wider Solent Waders and Brent Goose network due to the unacceptable loss of functionally linked Special Protection Area habitat. Insufficient information has been provided to demonstrate that adequate mitigation for the loss of Secondary Support Area and Low Use Areas is being provided;*
 - g) The applicant has failed to provide sufficient evidence to demonstrate that the development would not result in unacceptable harm to protected species that may be present on site or affected by its development;*
 - h) The proposal would result in the loss of best and most versatile agricultural land;*
 - i) The applicant has failed to demonstrate the development would not result in an unacceptable impact on highway operation and safety, nor that the development can be accommodated in a manner that would not cause increased danger and inconvenience to highway users, including those travelling by sustainable modes. On this basis the proposed development would result in a severe impact on the road network;*
 - j) Had it not been for the overriding reasons for refusal, the Council would have sought to secure the details of the SuDS strategy including the mechanisms for securing its long-term maintenance through an appropriate legal agreement;*
 - k) In the absence of a legal agreement to secure such, the proposal fails to secure on-site provision of affordable housing at a level in accordance with the requirements of the Local Plan;*
 - l) In the absence of a legal agreement to secure provision of the open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met;*
 - m) In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are*

- in place to assist in reducing the dependency on the use of the private motorcar;*
- n) *In the absence of a legal agreement to secure such, the proposal would fail to provide a financial contribution towards education provision.*

5.0 Relevant Planning History

5.1 There is no recent relevant planning history regarding the appeal site itself. However, there are two recent [June and July 2021] two appeal decision letters concerning three appeals in the immediate vicinity of this current appeal which are clearly pertinent to the determination of this appeal. Both were considered on the basis of there not being a 5YHLS and that the titled balance and DSP40 were engaged.

Land at Newgate Lane (North) and (South), Fareham (FBC4) (June 2021)

5.2 The development proposed in the North appeal was the "*Demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure*".

5.3 The development proposed in the South appeal was the "*demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure*".

5.4 The main issues in these cases were consider by the Inspector to be: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

5.5 Inspector Jenkin's concluded at 112 that:

"Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals."

5.6 At 114 he continued:

"I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me

to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals."

5.7 As a result, both appeals were dismissed.

Land at Newgate Lane (East) (FBC5) (July 2021)

5.8 The site is immediately to the south of the current appeal site. The development proposed in these appeals was the same and was for a "*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)*".

5.9 Inspector Jones concluded his findings on this case in paragraph 52 of the decision letter, stating:

"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."

5.10 The Council notes that the appellants in their SoC consider this appeal decision to be very significant. The Council agree – but NOT for the same reasons.

5.11 The inappropriateness of residential development within this landscape is highlighted by the findings of the two Inspectors who have heard appeals in recent years.

5.12 In the case of the unsuccessful conjoined appeal for up to 190 dwellings on land to the south-west of the appeal site, Inspector Jenkins determined that the development in this location would result in significant harm to the landscape of the area, and significant harm to the character and appearance of the area.

5.13 In the case of the successful appeal for up to 99 affordable dwellings directly to the south of the site, Inspector Jones determined that the proposals would harm the character and appearance of the area and would fail to minimise landscape harm as required by local planning policy

- 5.14 It is therefore the case that both Inspectors who have considered the implications of residential development within this part of the Alver Valley have found it to result in harm to the character and appearance of the landscape. The current scheme is significantly larger than the previous proposals in terms of both area and quantity, and therefore it stands to reason that the landscape harm will be greater still.
- 5.15 In terms of the effect upon the integrity of the Strategic Gap, Inspector Jones [Newgate Lane East] referred to Core Strategy Policy CS22, which states that a development proposal "*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*". The Inspector judged that the modest size of the development in question (99 dwellings) relative to the overall size of the Gap, and its location on the edge of the Gap adjacent to a settlement boundary were such that "*there would not be a significant effect on the integrity of the Gap, be it individually or cumulatively*". In making this statement, the Inspector was only considering the development before him and aligning his statement with the exact wording of Policy CS22. There is no suggestion that Inspector Jones was considering any development cumulatively with the development before him, and the Inspector was not aware of the current appeal scheme when the judgement was made. Therefore it could not have been a cumulative consideration. Equally, the Inspector was aware that the former draft HA2 housing application had been withdrawn prior to the appeal, and therefore this could not have been a valid consideration.
- 5.16 The granting of permission for the scheme to the south of the site on appeal, in spite of its failure to comply with local Strategic Gap policies CS22 and DSP40(iii), has placed this landscape at a tipping point at which any further development is anticipated to result in a complete loss of its rural integrity and character, and the individuality and identity of settlements. It is therefore imperative that this be preserved in accordance with the current and emerging Development Plans.

6.0 Relevant Planning Policy

Local Planning Policy

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011

6.1 Policy CS2 – Housing Provision states:

"3,729 dwellings will be provided within the Borough to meet the South Hampshire sub-regional strategy housing target between 2006 and 2026, excluding the SDA. Priority will be given to the reuse of previously developed land within the existing urban area.

Housing will be provided through;

- *Completions between April 2006 and March 2010 (1,637 units);*
- *Sites that already have planning permission (1,434 units);*
- *Dwellings on previously developed land;*
- *Sites allocated in earlier local plans;*
- *The Strategic Development Allocation at the former Coldeast Hospital;*
- *The Strategic Development Location at Fareham Town Centre; and*
- *New allocations and redesignations to be identified through the Site Allocations and Development Management DPD.*

The supply of sites will be kept up-to-date through a regular review of the Strategic Housing Land Availability Assessment which will identify sites. Those that are allocated will be done so through the Site Allocations and Development Management Development Plan Document. The Annual Monitoring Report will inform the pace of housing delivery and update the housing trajectory. Development will achieve a mix of different housing sizes, types and tenures informed by the Housing Market Assessment and the Council's Housing Strategy."

6.2 Policy CS4 – Green Infrastructure, Biodiversity and Geological Conservation covers a range of related planning issues concerning habitats, nature conservation sites and green infrastructure. The relevant part of the policy reads as follows:

"Green Infrastructure will be created and safeguarded through:

- *Investing in appropriate management, enhancement and restoration, and the creation of new resources including parks, woodland and trees, and wildlife habitats;*

- *Not permitting development that compromises its integrity and therefore that of the overall green infrastructure framework”.*

6.3 Policy CS5 – Transport Strategy and Infrastructure states (relevant extracts only):

“The Council will, where necessary, work with the Local Highways Authority, Highways Agency and transport operators to promote, permit, develop and/or safeguard a high quality and sustainable integrated transport system for the Borough. This will include the following measures:

...

3. The Council will permit development which:

- *contributes towards and/or provides necessary and appropriate transport infrastructure including reduce and manage measures and traffic management measures in a timely way;*
- *does not adversely affect the safety and operation of the strategic and local road network, public transport operations or pedestrian and cycle routes;*
- *is designed and implemented to prioritise and encourage safe and reliable journey's by walking, cycling and public transport.”*

6.4 Policy CS6 – The Development Strategy states:

“Development will be focused in:

- *Fareham (Policy CS7), the Western Wards & Whiteley (Policy CS9), Portchester, Stubbington & Hill Head and Titchfield (Policy CS11);*
- *Land at the Strategic Development Locations to the North of Fareham (Policy CS13) and Fareham Town Centre; (Policy CS8);*
- *Land at the Strategic Development Allocations at the former Coldeast Hospital (Policy CS10) and Daedalus Airfield (Policy CS12).*

In identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries including their review through the Site Allocations and Development

Management DPD, taking into consideration biodiversity / potential community value, the character, the accessibility, infrastructure and services of the settlement and impacts on both the historic and natural environment. Opportunities will be taken to achieve environmental enhancement where possible.”

6.5 Policy CS14 – Development Outside Settlements states:

“Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from

development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agricultural, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible. In coastal locations, development should not have an adverse impact on the special character of the coast when viewed from the land or water."

6.6 Policy CS16 – Natural Resources and Energy states:

"New development will be expected to safeguard the use of natural resources by:

- Demonstrating the latest best practice for energy efficiency, passive solar design and water conservation in the construction and use of the buildings;*
- Taking measures to reduce carbon emissions, pollution and waste during the construction and operation of new developments through orientation, layout, design and material selection;*
- Reducing, reusing and recycling waste on-site;*
- Preventing the loss of the best and most versatile agricultural land*

(Grades 1, 2 or 3a of the Natural England Agricultural Land Classifications System);

- Protecting mineral resources from permanent development, without first allowing for extraction, which would lead to the sterilisation of the deposit.*

Development (1 dwelling or more and 500m² or more of non-residential floorspace) will be encouraged to contribute to the Fareham target of 12MW of renewable energy by 2020. Major developments (250 dwellings or more or 5,000 sq.m or more of non-residential floorspace) should aim to maximise onsite renewable energy production and resource efficiency. In such cases, the extent of contribution should be demonstrated, taking account of viability. The generation of energy from renewable or low carbon sources will be permitted unless there are judged to be unacceptable social, environmental or economic impacts."

6.7 Policy CS17 – High Quality Design states in part:

"All development, buildings and spaces will be of a high quality of design and be safe and easily accessed by all members of the community. Proposals will need to demonstrate adherence to the principles of urban design and sustainability to help create quality places. In particular development will be designed to:

- *respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials,*
- *provide continuity of built form, a sense of enclosure with active frontages to the street and safety of the public realm,*
- *ensure permeable movement patterns and connections to local services, community facilities, jobs and shops,*
- *create a sense of identity and distinctiveness and one that is legible,*
- *enable and/or encourage a mix of uses and diversity in an area,*
- *ensure that the public realm has pedestrian priority, is safe, secure, functional and accessible, and is constructed of quality materials and well maintained,*
- *enable buildings to provide flexible accommodation, which can be adapted to suit all members of a community throughout their lifetime,*
- *provide green infrastructure, including landscaping, open spaces, greenways and trees within the public realm, and*
- *provide appropriate parking for intended uses taking account of the accessibility and context of a development and tackling climate change.*

In addition new housing will be required to:

- *secure adequate internal and external space, dwelling mix, privacy, and sunlight and daylight to meet the requirements of future occupiers."*

6.8 Policy CS18 – Provision of Affordable Housing states:

"The Council will require the provision of affordable housing on all schemes that can deliver a net gain of 5 or more dwellings.

- *On sites that can accommodate between 5 and 9 dwellings developers will be expected to provide 30% affordable units OR the equivalent financial contribution towards off-site provision.*
- *On sites that can accommodate between 10 and 14 dwellings developers will be expected to provide 30% affordable units.*
- *On sites that can accommodate 15 or more dwellings developers will be expected to provide 40% affordable units.*

Development proposals will be required to provide a mixture of dwelling types, sizes and tenures reflecting the identified housing needs of the local population.

Where development viability is an issue, developers will be expected to produce a financial assessment in which it is clearly demonstrated

the maximum number of affordable dwellings which can be achieved on the site.

Should a site fall below the above identified thresholds but is demonstrably part of a potentially larger developable site, the Council will seek to achieve affordable housing on a pro rata basis.

The level of affordable housing provision will also be subject to other planning objectives to be met from the development of the site."

6.9 Policy CS20 – Infrastructure and Development Contributions states:

"Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider. Contributions or provision may also be required to mitigate the impact of development upon infrastructure. Detailed guidance on provision or contributions is or will be set out in Supplementary Planning Document(s) including any standard charges introduced through the Community Infrastructure Levy.

Provision or financial contributions will be required to include arrangements for on-going maintenance where necessary and appropriate.

Phasing of development will be related to the provision of infrastructure. Consideration will be given to pooling of contributions towards the cost of facilities."

6.10 Policy CS21 – Protection and Provision of Open Space states:

"The Borough Council will safeguard and enhance existing open spaces and establish networks of Green Infrastructure to add value to their wildlife and recreational functions. Development which would result in the loss of or reduce the recreational value of open space, including public and private playing fields, allotments and informal open space will not be permitted, unless it is of poor quality, under-used, or has low potential for open space and a better quality replacement site is provided which is equivalent in terms of accessibility and size.

Proposals for new residential development will be permitted provided that, where existing provision is insufficient to provide for the additional population, public open space is provided as follows:

- Parks and Amenity Open Space 1.5 ha / 1,000 population*
- Outdoor Sport – 1.2 ha / 1,000 population*
- Children's Play Equipment – 14 pieces of equipment per 1,000 1-12 year olds*

- Youth Facilities – 1 youth facility/MUGA per settlement area

In addition to these types of open spaces, where existing provision is insufficient to provide for the additional population, the Borough Council will seek the provision of accessible greenspace which meets the standards set out in the South East Green Infrastructure Framework including Accessible Natural Green Space standards.”

6.11 Policy CS22 - Development in Strategic Gaps states in full:

*“Land within a Strategic Gap will be treated as countryside. Development proposals 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.***

*Strategic Gaps have been identified between **Fareham/Stubbington** and Western Wards/Whiteley (the Meon gap); and Stubbington/Lee on the Solent and Fareham/Gosport.*

Their boundaries will be reviewed in accordance with the following criteria:

- a) The open nature/sense of separation between settlements cannot be retained by other policy designations;*
- b) The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;*
- c) In defining the extent of a gap, no more land than is necessary to prevent the coalescence of settlements should be included having regard to maintaining their physical and visual separation.” (emphasis added)*

6.12 The Policy Justification for strategic gaps is set out in the supporting text at 6.52 and 6.53 which state:

6.52 Gaps between settlements particularly between Fareham and the Western Wards and Fareham and Stubbington, help define and maintain the separate identity of individual settlements and have strong local support. Strategic gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. Continuing pressure for high levels of development mean that maintaining gaps continues to be justified.

6.53 *Maintaining separation between Fareham and Titchfield Common/Segensworth and Fareham and Stubbington will prevent coalescence of the settlements in this densely settled part of South Hampshire. The countryside separating the settlements is narrow in places and under pressure for development, but it provides opportunities for additional public access. A review of the detailed boundaries will be undertaken as part of the Site Allocations and Development Management DPD to identify the land essential to perform this role and that which cannot be protected by other designations.*

Local Plan Part 2: Development Sites and Policies – Adopted 8th June 2015

6.13 Policy DSP1 – Sustainable Development states:

"When considering development proposals, the Council will take a positive approach that reflects the "presumption in favour of sustainable development" contained in the National Planning Policy Framework. It will always work proactively with applicants to find solutions that enable proposals to be granted permission wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application, or where relevant policies are out-of-date at the time of making the decision, the Council will grant permission, unless material considerations indicate otherwise. This will include taking into account whether or not:

- i. the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; and/or*
- ii. specific policies in the National Planning Policy Framework indicate that development will not be supported."*

6.14 Policy DSP6 – New Residential Development Outside of the Defined Urban Settlement Boundaries states:

"There will be a presumption against new residential development outside of the defined urban settlement boundaries (as identified on the Policies Map). New residential development will be permitted in instances where one or more of the following apply:

- i. *It has been demonstrated that there is an essential need for a rural worker to live permanently at or near his/her place of work; or*
- ii. *It involves a conversion of an existing non-residential building where;*
 - a) *the buildings proposed for conversion are of permanent and substantial construction and do not require major or complete reconstruction; and*
 - b) *evidence has been provided to demonstrate that no other suitable alternative uses can be found and conversion would lead to an enhancement to the building's immediate setting.*
 - iii. *It comprises one or two new dwellings which infill an existing and continuous built-up residential frontage, where:*
 - a) *The new dwellings and plots are consistent in terms of size and character to the adjoining properties and would not harm the character of the area; and*
 - b) *It does not result in the extension of an existing frontage or the consolidation of an isolated group of dwellings; and*
 - c) *It does not involve the siting of dwellings at the rear of the new or existing dwellings.*

A change of use of land outside of the defined urban settlement boundary to residential garden will only be permitted where:

- i. *It is in keeping with the character, scale and appearance of the surrounding area; and*
- ii. *It will not detract from the existing landscape; and*
- iii. *It respects views into and out of the site.*

New buildings should be well-designed to respect the character of the area and, where possible, should be grouped with existing buildings.

Proposals should have particular regard to the requirements of Core Strategy

Policy CS14: Development Outside Settlements, and Core Strategy Policy

CS6: The Development Strategy. They should avoid the loss of significant

trees, should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts, or detrimental impact on the character or landscape of the surrounding area."

6.15 Policy DSP13 – Nature Conservation states:

"Development may be permitted where it can be demonstrated that;

- i. *designated sites and sites of nature conservation value are protected and where appropriate enhanced;*
- ii. *protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;*
- iii. *where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and*
- iv. *The proposal would not prejudice or result in the fragmentation of the biodiversity network.*

Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that (this section of the policy should not be applied to impacts on SPA designated sites which are subject to stricter protection tests as set out in The Conservation of Species and Habitats Regulations (as amended) 2010);

- i. *Impacts are outweighed by the need for, and benefits of, the development; and*
- ii. *Adverse impacts can be minimised and provision is made for mitigation and, where necessary, compensation for those impacts is provided.*

Enhancements that contribute to local habitat restoration and creation initiatives as set out in the Hampshire Biodiversity Action Plan (or other similar relevant document) will be supported."

6.16 Policy DSP14 – Supporting Sites for Brent Geese and Waders states:

"Development on 'uncertain' sites for Brent Geese and/or Waders (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be permitted where studies have been completed that clearly demonstrate that the site is not of 'importance'.

Development on 'important' sites for Brent Geese and/or Waders, (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be granted planning permission where:

- i. *it can be demonstrated that there is no adverse impact on those sites; or*
- ii. *appropriate avoidance and/or mitigation measures to address the identified impacts, and a programme for the implementation of these measures, can be secured.*

Where an adverse impact on an 'important' site cannot be avoided or satisfactorily mitigated, an Appropriate Assessment will be required

to determine whether or not the proposed development would have an adverse effect on the integrity of the Special Protection Areas supporting sites. Where an adverse effect on the integrity of a Solent Special Protection Area cannot be mitigated, planning permission is likely to be refused."

6.17 Policy DSP15 – Recreational Disturbance on the Solent Protection Areas states:

"In Combination Effects on SPA

Planning permission for proposals resulting in a net increase in residential units may be permitted where 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. In the absence of a financial contribution toward mitigation, an Appropriate Assessment will be required to demonstrate that any 'in combination' negative effects can either be avoided or satisfactorily mitigated through a developer provided package of measures.

Direct Effects on Special Protection Areas

Any application for development that is of a scale, or in a location, such that it is likely to have a direct effect on a European-designated site, will be required to undergo an individual Appropriate Assessment. This may result in the need for additional site-specific avoidance and/or mitigation measures to be maintained in perpetuity. Where proposals will result in an adverse effect on the integrity of any Special Protection Areas, planning permission will be refused."

6.18 Policy DSP40 – Housing Allocations states:

"The sites set out in Appendix C, Table 8 and shown on the Policies Map are allocated for residential development and should be developed in line with the principles set out in their respective Development Site Briefs.

Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site listed in Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.

All sites listed in Appendix C will be safeguarded from any other form of permanent development that would prejudice their future uses as

housing sites to ensure that they are available for implementation during the plan period.

Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

- i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. It can be demonstrated that the proposal is deliverable in the short term; and*
- v. The proposal would not have any unacceptable environmental, amenity or traffic implications."*

Emerging Local Plan 2037 [LP37]

- 6.19 The Council is in the process of producing a new Local Plan. The emerging Local Plan will address the development requirements up until 2037 and in due course will replace Local Plan Part 1 (Core Strategy) and Local Plan Part 2 (Development Sites and Policies).
- 6.20 It is important to note at this stage that the site has never been allocated. It was one of a number of sites consulted upon as part of a Regulation 18 consultation on the Local Plan in 2017, a consultation that was superseded by subsequent Regulation 18 and 19 consultations in 2020 and 2021. The proposed site received 517 objections including a number of strategic objections from Gosport Borough Council and the Highway Authority, on the basis of the points already raised in relation to the strategic gap and highways, particularly in relation to access onto the new Newgate Lane bypass. This led to the site being removed from the list of potential sites as it was contrary to the emerging development strategy.
- 6.17 On 2nd October 2020 the Council approved a publication version of its emerging Local Plan under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and a six-week period of public consultation took place between 6th November and 18th December 2020. The emerging Local Plan was then revised in the light of changes to the Planning Practice Guidance. On 10th June 2021 the Council approved a revised version of the emerging Local Plan for

publication under Regulation 19. The consultation opened ran for six weeks from 18th June 2021 until 30th July 2021.

- 6.18 The Council submitted the Regulation 22 Fareham Local Plan 2037 and supporting documents to the Secretary of State for independent examination on 30th September 2021.
- 6.19 The Local Plan Examination Hearings started on Tuesday 8th March 2022 and ended on Tuesday 5th April 2022. A Post Hearings Letter from the Inspector and dated 6th June 2022 (**FBC6**) which raised which concerns on a number of matters including the completions trajectory for Welborne and suggested pushing this back one year. At the Inspector's request, the Council have prepared updates to three topic papers on housing supply matters to understand the implications of her findings. These cover:
- Revised Affordable Housing Background Paper;
 - Revised Housing Supply Topic Paper; and
 - Windfall Analysis Update
- 6.20 The Inspector has requested (as set out in 'The Way Forward' - paragraphs 57 to 61 of the Post Hearings Letter) that the Council undertake a focused consultation which will run from 9am on Tuesday 5th July 2022 until 5pm on Monday 25th July 2022 on these three topic papers to seek views from those representors who have previously made representations.
- 6.21 The LPA consider that some weight can be attached to the emerging plan due to the progress that it has made in the examination process. Updates in progress of the emerging LP will be set out in the appropriate Council witnesses' proofs of evidence.
- 6.22 The Appeal Sites are within the countryside and Strategic Gap in the emerging Local Plan. Chapter 3 of the Plan sets out the Council's Development Strategy with policies DS1 and DS3 being of direct relevance. These policies are also confirmed in the Plan to be strategic policies to address the priorities for the development and use of land in the Borough.
- 6.23 **Policy DS1 (Development in the Countryside)** is a countryside restraint policy setting out those circumstances in which new development will be permitted in the countryside. In addition, it sets out a number of requirements that acceptable development will have to demonstrate and these include:
- i) Require a location outside of the urban area, and*
 - j) Conserve and enhance landscapes, sites of biodiversity or geological value and soils, and*
 - k) Recognise the intrinsic character and beauty of the countryside*

- 6.24 **Policy DS3** relates to Landscape with paragraph 3.55 of the supporting text recognising that all parts of the Borough have some landscape quality and may be sensitive to landscape change, the following policy, which was consulted upon in early 2020, demonstrates how landscape should be dealt with in terms of development management. The policy requires development in the countryside to recognise the intrinsic character and beauty of the countryside, paying particular regard to:
- a) *Intrinsic landscape character, quality and important features;*
 - b) *Visual setting, including to/from key views;*
 - c) *The landscape as a setting for settlements, including important views to, across, within and out of settlements;*
 - d) *The landscape's role as part of the existing Local Ecological network;*
 - e) *The local character and setting of buildings and settlements, including their historic significance;*
 - f) *Natural landscape features, such as trees, ancient woodland, hedgerows, water features and their function as ecological networks; and*
 - g) *The character of the Borough's rivers and coastline, which should be safeguarded.*
- 6.25 With regard to major development the policy makes clear that proposals must include a comprehensive landscaping mitigation and enhancement scheme to ensure that the development is able to successfully integrate with the landscape and surroundings. The landscaping scheme shall be proportionate to the scale and nature of the development proposed and shall be in accordance with the enhancement opportunities specified in the Council's Landscape Sensitivity Assessment.
- 6.26 Chapter 4 deals with Housing Need and Supply with Table 4.1 indicating a Total Housing Requirement to 2037 of 9,556 dwellings. Table 4.2 sets out the supply, based current and proposed allocations along with outstanding permissions. These indicate a supply of 10,594, thus providing a contingency provision of 1,038 dwellings.
- 6.27 **Policy H1 (Housing Provision)** makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources.
- 6.28 **Policy HP1 (New Residential Development)** states that residential development in locations outside of the Urban Area boundary will be permitted where one of two factors (neither of which apply in this case) applies.

- 6.29 **Policy HP4 (Five-Year Housing Land Supply)** applies where the Council cannot demonstrate a five-year supply of land for housing and broadly mirrors the wording of LPP2 Policy DSP40.
- 6.30 **Policy HP5 (Provision for Affordable Housing)** states that, on greenfield sites that can accommodate 10 or more dwellings or with an area of 0.5ha or more, developers will be expected to provide 40% affordable units.
- 6.31 **Policy NE1 (Protection of Nature Conservation, Biodiversity and the Local Ecological Network)** states that development will be permitted where, among other things, designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations.
- 6.32 **Policy NE3 (Recreational Disturbance on the Solent Special Protection Areas (SPAs))** requires mitigation of recreational impacts of development on the Solent SPAs.
- 6.33 **Policy NE4 (Water Quality Effects on the Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites of the Solent)** states that planning permission will be granted where the integrity of the designated sites is maintained, having regard to the effect of nutrients on the designated sites arising from increased wastewater production.
- 6.34 **Policy NE10 (Protection and Provision of Open Space)** requires residential development to provide open and play space to meet the needs of new residents.
- 6.35 **Policy TIN4 (Infrastructure Delivery)** requires provision of and contribution towards the delivery of new or improved infrastructure, or other mitigation, to mitigate the impacts of development.
- 6.36 Chapter 11 deals with Design with the supporting text to **Policy D1 (High Quality Design and Placemaking)** noting at paragraph 11.3 that:

"The NPPF, as supported by Planning Practice Guidance (PPG), and the National Design Guidance (NDG) and the National Model Design Code (NMDC), states that that the design quality of new development is more than just the appearance, form, materials and detail of buildings. It includes the arrangement of buildings within a layout, how close together they are, the spaces in between buildings, the views and vistas they create, landscape and planting, biodiversity, other uses and activities, the richness of users' experience both visual

and rural, and how they connect with existing and proposed essential services and facilities.”

6.37 Paragraph 11.8 makes clear that a well-designed, contextual development demonstrates that it is:

- *based on a sound understanding of the features of the site and the surrounding context, that should include those identified above; and*
- *integrated into their surroundings so it relates well to them; and*
- *influenced by and influence their context positively; and*
- *responsive to local history, culture and heritage*

6.38 **Policy D1** itself states:

“Development proposals and spaces will be of high quality, based on the principles of urban design and sustainability to ensure the creation of quality places.

Development proposals will be permitted where compliance with the following key characteristics of high quality design, as set out in paragraphs 11.5-11.27, has been demonstrated:

- i. Context - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and*
- ii. Identity - where proposals create places that are attractive, memorable, distinctive and of strong character; and*
- iii. Built form - where proposals create a three-dimensional pattern or arrangement and scale of development blocks, streets, buildings and open spaces, that are coherent, attractive and walkable; and*
- iv. Movement - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity; and*
- v. Nature - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure; and*
- vi. Public spaces - where proposals create public spaces that are attractive, safe, accessible and provide a focus for social interaction, and promote healthy activity and well-being; and*
- vii. Uses - where proposals provide or are well related and connected with, a mix of uses that provide the day to day needs of users; and*
- viii. Homes and buildings - where proposals provide a variety of dwelling sizes and tenures, have sufficient space and are well related to public space; and*

- ix. *Resources - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste; and*
- x. *Lifespan - where proposals are designed and constructed to create enduring high-quality buildings, spaces and places that are attractive and functional, which weather well and can be adapted to users' needs with efficient management and maintenance."*

6.39 In terms of how this policy works, paragraph 11.28 states:

"The quality of buildings, spaces and places will be assessed at all scales and having regard to all users. Quality design will be at the heart of the Council's decisions, from the location of new development at a strategic level through to the design and appearance of buildings and spaces, their details, landscaping and how they are to be managed and maintained for the long term."

Fareham Borough Landscape Character Assessment (1996)

6.40 The appeal site lies with Character Area 8 – Woodcot / Alver Valley which at 4.33 is described as:

"forms part of the strategic gap separating Fareham and Gosport but it is very different in character and scale from the open farmed landscape to the west. It comprises a mixed pattern of wooded common, small-scale pasture and ribbon development along the corridors of the River Alver and Newgate Lane and is bounded to the east by the urban edge of Gosport and to the north by the outskirts of Fareham."

6.41 The essential characteristics are identified in 4.34 as being:

- *a mosaic of small and medium scale fields at Woodcot, forming a mixture of small horse-grazed pasture and larger arable fields divided by fences, ditches and gappy hedgerows; although this area forms the upper part of the Alver Valley it lacks a distinct valley character; the hedgerow pattern is gradually replaced by scrubby woodland to the south, enclosing Chark Common and the golf course;*
- *the character is influenced by the busy road corridor and the urban characteristics of Peel Common and HMS Daedalus on one side and the urban edge of Bridgemary on the other.*

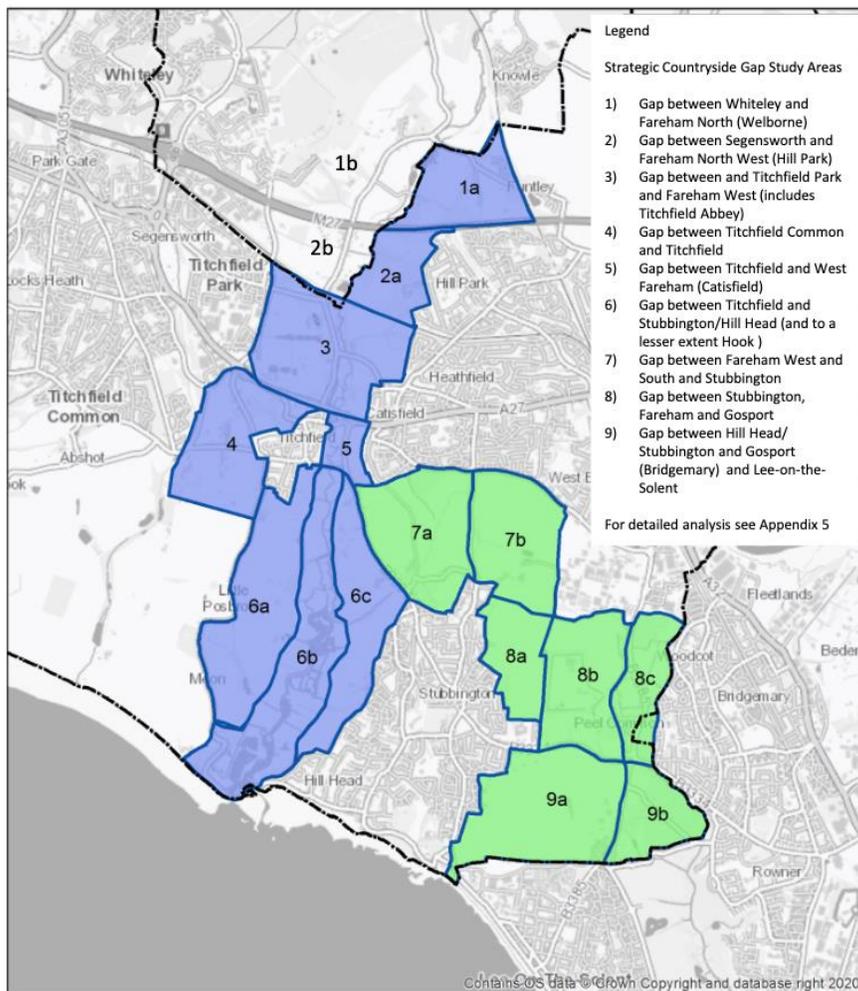
6.42 Enhancement Priorities are set out in 4.35 and 4.36 which state:

4.35 Like the previous area, the priority must be to maintain separation between settlements but also to improve the quality of the landscape through management and new planting.

4.36 The priorities for enhancement are: to maintain the rural character of the area and the separate identity of settlements; to protect existing features of landscape and ecological value, such as areas of woodland, trees, hedgerows, rough grassland and heath and the small-scale field pattern; to encourage new planting to reinforce these characteristics and to reduce the impact of the urban fringes of Gosport and of the roads and ribbon development.

Technical Review of Areas of Special Landscape Quality and Strategic Gaps, 22 September 2020

6.43 Insofar as this appeal is concerned the relevant part of this document relates to technical review of the Fareham Stubbington Strategic Gap and particular subzone 8, within which the appeal site falls.



- 6.44 Chapter 4 SG2 deals with this this gap and paragraphs 15 to 17 are specific to subzone 8c. They state:

Newgate Lane and Peel Common Area (Strategic Gap Study Area 8c)

15. Despite the proximity of Fareham and Gosport in the north part, the gap is currently still effective in providing a 'sense of separation', but it is at risk. Substantial vegetation around boundaries currently prevents visual coalescence. There is a defined boundary along settlement edges and a gap of sufficient scale and coherence of character. Whilst the recently completed Newgate Lane South road development does not alter the experience of entering the urban area of Gosport beyond the Peel Common Roundabout, it does reduce tranquility and bring more built features (such as noise attenuation barriers) into this part of the gap. Further development within the gap in addition to the road scheme, together with existing urban fringe activity, is likely to cause visual, or even physical, coalescence of settlements on either side of the new road corridor.

16. Even with the development of Newgate Lane South, the previous analysis carried out by LDA and described in Chapter 3 of the Fareham Borough Landscape Character Assessment 2017, is still relevant: "A cohesive area of undeveloped landscape which performs an important role in respect of the primary purposes of the Strategic Gap, i.e. in defining the edges, separate identity and settings of Fareham and Gosport, preventing their coalescence. Even minor encroachment beyond existing settlement boundaries could have an adverse effect on these functions and the overall integrity of the landscape and Strategic Gap." (page 43)

17. It is recommended that a GI Framework or Strategy for the Strategic Gap Study Area 8c would be beneficial to enhance the GI value of the current gap and potentially help determine an appropriate GI framework for moderately scaled development. The planting associated with the Newgate Lane Highway works will exert a stronger woodland/hedgerow edge as it establishes, and this should be factored into a GI Strategy. The GI Strategy or Framework should reassess the Open Coastal Plain Landscape Type: with a view to creating stronger GI structure throughout, but highlighting and retaining long North-South views, and largely undeveloped views eastward from old Newgate Lane, to retain a sense of space and 'big skies'.

National Planning Policy Framework (2021)

- 6.45 The NPPF is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely planned (paragraph 15).

6.46 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. It states, so far as material:

Plans and decisions should apply a presumption in favour of sustainable development.

...

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**

6.47 Footnote 7 states that the policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.

6.48 Footnote 8 states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

6.49 In terms of considering the impact of development proposals on highway matters paragraphs 110 and 111 are considered to be directly relevant they state:

110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*

- b) *safe and suitable access to the site can be achieved for all users;*
- c) *the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and*
- d) *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

- 6.50 National policy on design has been substantially strengthened in the revised Framework. Chapter 12 of the Framework. "*Achieving well-designed places*" has been significantly revised.
- 6.51 The overarching social objective of the planning system now has "*beautiful*" added to the previous requirement to provide "*a well-designed, [beautiful] and safe built environment*". There is no definition of "*beautiful*", which is necessarily context specific.
- 6.52 Paragraph 174 requires decisions to recognise the intrinsic character and beauty of the countryside, including inter alia, the economic and other benefits of the best and most versatile agricultural land [174b].
- 6.53 Paragraph 174a also requires decisions to protect and enhance sites of biodiversity value and further provision is made on this issue in paragraphs 179 to 181. Paragraph 182 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

7.0 Weight to be afforded to adopted Local Plan policies

Housing Land Supply

- 7.1 Fareham Borough Council produces updates to the housing land supply on an at least monthly basis. At the time of submitting this statement the Council's most recently published housing land supply is the Five Year Housing Land Supply (5YHLS) Position Paper as at 1st July 2022 – see Table reproduced below - that was reported to the Council's Planning Committee of 6th July 2022 (provided as **FBC7**). The position paper identifies that the Council can currently demonstrate a 5YHLS.
- 7.2 The housing land supply as of 1st July, demonstrated there was a 5.01 years supply of housing, which equates to a surplus of 6 units. Previous monthly updates have shown the 5YHLS to be below 5 years.

Five Year Housing Land Supply Position (as at 1st Jul 2022)

HOUSING REQUIREMENT		
A	Local Housing Need: Dwellings per annum	541
B	Local Housing Need: Total requirement for 1 st July 2022 to 30 th June 2027 (A x 5)	2,705
C	20% buffer - delivery of housing over the previous 3 years, has fallen below 85% of the requirement, as set out in the 2020 Housing Delivery Test results (B x 20%)	541
D	Total housing requirement for period from 1st July 2022 to 30th June 2027 (B+C)	3,246
E	Annual requirement for period from 1st July 2022 to 30 th June 2027 (D/5)	649
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 30 th June 2027 (discounted by 10% for lapses)	70
G	Net outstanding full planning permissions for large sites (5 or more units) expected to be built by 30 th June 2027	1184
H	Net outstanding outline planning permissions for large sites (5 or more units) expected to be built by 30 th June 2027	1387
I	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30 th June 2027	278
J	Dwellings allocated in Adopted Local Plan that are expected to be built by 30 th June 2027	41
K	Dwellings from brownfield register sites that are expected to be built by 30 th June 2027	192
L	Small site windfall allowance (years 4 – 5) (51 dwellings x 2 years)	100
M	Expected housing supply for the period from 1st July 2022 to 30th June 2027 (F+G+H+I+J+K+L)	3,252
N	Housing Land Supply Position over period from 1st July 2022 to 30th June 2027 (M – D)	6
O	Housing Supply in Years (M / E)	5.01

- 7.3 Whilst the Council can demonstrate a five year housing land supply, the Housing Delivery Test results published on 14 January 2022 confirmed that the Council has achieved 62% of its housing target. This means the delivery of housing in the last three years (2018 to 2021) was substantially below (less than 75%) the housing requirement over the previous three years. Footnote 8 of paragraph 11 of the NPPF is clear that in such circumstances those policies which are most important for determining the application are to be considered out-of-date, meaning that the presumption in favour of sustainable development in paragraph 11(d) is engaged.

Approach based upon a 5YHLS

- 7.4 Paragraph 74 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.
- 7.5 In the absence of a five-year supply of deliverable housing sites, the Council considers that policy DSP40 is the principal development plan policy that guides whether schemes will be considered acceptable.
- 7.6 In such circumstances, where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, the fact that the proposal is in breach of policy DSP40 must be given very significant weight in the planning balance. This is because the fact that policy DSP40 is breached puts the development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37 (**FBC8**) ("*Suffolk Coastal*") at [21] the Framework:

"...cannot and does not purport to displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme."

- 7.7 The following paragraphs give various examples of how previous Inspectors have afforded weight to local plan policies which are considered out-of-date. All of the appeals referred to are in Fareham Borough.

Land east of Down End Road, Portchester (**FBC9**) (5 November 2019)

- 7.8 There was difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). At paragraph 90, Inspector Gould errs on the side of caution and considers the Appellant's figure better represents the current situation, however, notwithstanding this fact, he concludes at paragraph 97 that "great weight" should be attached to the conflict with Policy DSP40 and CS5 and the development plan.
- 7.9 Whether or not the tilted balance is engaged does not determine the weight to be given to policies (whether they be out of date or not) which remains a matter of planning judgment for the decision maker. This was made clear by both the Court of Appeal and the Supreme Court in *Suffolk Coastal* (see for example Lord Carnwath at paragraphs [54]-[56]). The fact that the most important policies for determining the application (including DSP40) are rendered out of date by virtue of a lack of housing land supply simply triggers paragraph 11(d). This factor has no bearing on whether DSP40 should be given reduced weight.
- 7.10 In this appeal the tilted balance was engaged. At paragraph 100 Inspector Gould concludes that that the adverse impacts of the granting planning permission would significantly and demonstrably outweigh the benefits as a whole - a decision he has reached having applied the tilted balance set out in NPFf paragraph 11(d)(ii).

Appeal for 150 dwellings at Land East of Posbrook Lane (**FBC10**) (April 2019)

- 7.11 In this Appeal Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. Inspector Stone also determined that because of the lack of a 5YHLS policies to protect the countryside such as CS14, 22 and DSP6 did not have full weight rather they had significant weight. In respect of Policy DSP40, however, he concluded at Paragraph 68 that:

"...The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes

that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight."

Land West of Old Street, Stubbington (**FBC11**) (January 2019)

- 7.12 In the case of the Land West of Old Street, Stubbington (PINS reference APP/A1720/W/18/3200409), as with the previous appeals, Inspector Downes did not determine the precise extent of the shortfall but considered it to be substantial. At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

"Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing supply shortfall as is the case here. It allows housing to come forward outside of settlements and within strategic gaps, subject to a number of provisions. It seems to me that this policy seeks to complement the aforementioned policies in situations where some development in the countryside is inevitable in order to satisfy an up-to-date assessment of housing need. It assists the decision maker in determining the weight to be attributed to the conflict with restrictive policies such as CS14, CS22 and DSP6 and provides a mechanism for the controlled release of land through a plan-led approach. Policy DSP40 is in accordance with Framework policy and reflects that the LPP2 post-dates the publication of the Framework in 2012. Conflict with it would be a matter of the greatest weight."

Land at Newgate Lane (North) and (South), Fareham (**FBC4**) (June 2021)

- 7.13 The matter of weight to be given to Policy DSP40 was considered in his [Inspector Jenkin's] Planning Balance section of the Newgate Lane (north) appeal at paragraphs 108 to 110 of his decision letter as set out below:

108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the

view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.

109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements; and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).
111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.

Land at Newgate Lane (East) (FBC5) (July 2021)

- 7.14 In the planning balance the Inspector sets out at paragraphs 45 and 46 the weight he attaches to various policies:

"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 LP1 Policy CS17 as carrying full weight."

Land East of Crofton Cemetery, Stubbington (**FBC12**) (November 2021)

- 7.15 At paragraph 6 Inspector Jordan noted that it was common ground that at the time the 5YHLS figure was between 3.17 and 3.57 years of supply, and considered it unnecessary to determine the precise figure.
- 7.16 Paragraphs 8 to 12 deal with the policy background and in respect of the relationship of DSP40 to other policies, Inspector Jordan comments at 11:

"Policy DSP40 allows for additional residential development where a 5YHLS cannot be demonstrated subject to various criteria being met. By seeking to find additional housing sites, and by accepting that development can, in appropriate circumstances, take place outside settlement boundaries, it must follow that compliance with Policy DSP40 would outweigh conflict with policies CS2, CS6 and CS14 of the CS and DSP6 of the LP...."

Land East of Posbrook Lane, Titchfield (**FBC13**) (February 2022)

- 7.17 In the planning balance the Inspector sets out at paragraphs 105 to 118 considerations relating to the Development Plan as a whole.
- 7.18 At paragraph 117 the Inspector expresses a final view on DSP40, stating:

"Policy DSP40 is fundamental and serves as the single most important policy for determination of this appeal. It renders the development plan substantively up-to-date and I afford the policy full and overriding weight."

Land South of Funtley Road, Fareham (**FBC14**) (May 2022)

- 7.19 With regard to the weight to be attached to policy DSP40, the inspector concluded at paragraph 86:

"Whilst LP2 Policy DSP40 does not explicitly override those other policies, it sets out specific circumstances and criteria, where development outside of settlements would be acceptable and hence development in circumstances not provided for in the suite of development location policies. These necessarily include effects on countryside and landscape and it contains provisions within its criteria as to how such effects should be considered which carries more weight than those landscape protection elements of CS14 and DSP6. I note that the Inspectors took a similar approach in the recent Crofton Cemetery and Land at Newgate Lane (north and south) decisions and I consequently prefer the Council's approach that it carries substantial weight."

Conclusions on the weight to be afforded to Policy DSP40

- 7.20 The Council considers Policy DSP40 should be afforded full weight in the planning balance given that it is designed specifically to address a situation where there is a HLS shortfall. Furthermore, policy DSP40 is wholly consistent with the NPPF (2021).
- 7.17 A breach of policy DSP40 puts a development squarely at odds with the Council's development strategy and the core principle that planning for the future should be genuinely plan led.
- 7.18 Policy DSP40 has been crafted and found sound in order to deal with this precise situation – the lack of a five-year supply. The development plan requires that an application such as the instant one, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. This inherent flexibility ensures that the Policy maintains consistency with the emphasis at NPPF paragraph 60 on 'significantly boosting the supply of homes' and with the NPPF as a whole. Policy DSP40 is wholly consistent with the NPPF as it includes a procedure to assess granting planning permission for additional housing sites beyond the settlement boundary when a five-year housing land supply cannot be demonstrated.
- 7.19 Having regard to the findings of the Inspectors in the above appeal decisions, it is clear in my view that even though Policy DSP40 may be deemed to out of date by virtue of paragraph 11 and footnote 8 of the NPPF, it can be afforded full (or at the very least very substantial) weight in the planning balance as it was specifically designed to deal with those situations where there is not a five year housing supply. Accordingly, conflict with it should therefore be a matter of the greatest consideration.

Conclusions on the weight to be afforded to Other Policies

- 7.20 On the basis of the appeal proceeding on the assumption that there is a small shortfall in the five year housing land supply, it is considered that policies CS2, CS6 and DSP6 would be out of date and that the weight to be attributable to conflicts with policies CS14 and CS22 is reduced, but only to the extent they derive from settlement boundaries that reflect out of date housing requirements. Those policies, or parts thereof, which specifically relate to the provision or location of new housing should be given moderate limited weight due to any shortfall in housing supply being marginal. However, policies CS14 and DSP6 both contain criteria which seek to control development which would adversely affect landscape character and appearance. The landscape protection elements of those policies are consistent with the NPPF and should be afforded appropriate weight.
- 7.21 I accept (in line with paragraph 100 of the Newgate Lane North and South decision) that policy CS16 is more onerous than the approach in paragraph 174(b) of the NPPF, but it is nonetheless broadly aligned with the NPPF requirement that the economic and other benefits of best and most versatile agricultural land should be recognised in decisions, and the weight to be attached to it should reflect the size and value of the agricultural land to be lost.
- 7.22 The remainder of the relevant policies are in my view consistent with the NPPF and should attract full weight.

8.0 Proper approach to determining these appeals

The Section 38(6) test

- 8.1 By Sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, these appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point in determining these appeals is, therefore, the extent to which the appeal developments accord with or conflict with the adopted development plan policies. The decision maker must then turn to other material considerations, which in the case of the appeal developments include the NPPF.

Presumption in Favour of Sustainable Development

- 8.2 Paragraph 60 of the NPPF seeks to significantly boost the supply of housing.
- 8.3 As already stated above, paragraph 74 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.
- 8.4 Paragraph 11 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are "out-of-date". It states:

"For decision-taking this means:

- c) Approving development proposals that accord with an up-to date development plan without delay; or*
- d) Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date^{FN8}, granting planning permission unless:
 - i. The application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed^{FN7}; or**

- ii. *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

8.5 Footnote 7 to Paragraph 11 reads:

"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change."

8.6 The test set out at the second limb of paragraph 11 has become known as 'the tilted balance' as it tilts the planning balance in favour of granting permission.

Appropriate Assessment

8.7 NPPF Paragraph 182 states:

"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site".

8.8 The wording of Paragraph 182 is identical to that of Paragraph 177 of the 2019 version, which had been revised from the 2018 version to 're-engage' the presumption in favour of sustainable development where the appropriate assessment process had been positively concluded.

8.9 Paragraph 83 of the Funtley Road Lane appeal decision (**FBC14**) reads:

"Consequently, I am satisfied that should planning permission be granted that, subject to the measures secured by planning conditions and obligations, the integrity of the designated Habitats Sites would be safeguarded. Consequently, the development would accord with Core Strategy Policy CS4 and LP2 Policies DSP 13 and DSP15 which together, and amongst other criteria, seek to protect

internationally designated sites and mitigate any effects of recreational disturbance on the Solent Sites.”

- 8.10 The Council considers this to be the correct approach.
- 8.11 The appeal proposal is likely to have significant effects on habitats sites as set out in deemed reasons for refusal (d) to (f).
- 8.12 If otherwise minded to grant permission, an Appropriate Assessment under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 must be carried out by the Competent Authority which, for the purposes of determining planning appeals, is the Inspector appointed to act on behalf of the Secretary of State. In exercising their duty under the Habitats Regulations, a Competent Authority must, for the purposes of the assessment under the Regulations, consult the appropriate nature conservation body [Natural England] and have regard to any representations made by that body. If, having conducted an appropriate assessment, any adverse effects on the integrity of any habitats sites cannot be excluded beyond a reasonable scientific doubt, permission can only be granted if the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the appellants have not to date suggested.

Conclusions

- 8.13 Provided the further information referred to at 9.31 to 9.46 is forthcoming the Council is of the view that the habitat sites will not be adversely affected and that these elements of the RfR are not pursued (subject to appropriate controls through either conditions or a S106 agreement).
- 8.14 If the inspector concludes, after undertaking an Appropriate Assessment that the appeal proposal will adversely affect the integrity of habitat sites the footnote 7 to paragraph 11 will apply and the tilted balance CANNOT be applied.
- 8.15 If the Inspector concludes (following an appropriate assessment) that the proposal will not adversely affect the integrity of habitats sites, then the Council accept that the tilted balance will be engaged due to the HDT.
- 8.16 If the Inspector does not accept that the Council has a 5YHLS, and that the proposal will not adversely affect the integrity of habitats sites, then both the titled balance and Policy DSP40 are engaged.

9 The Local Planning Authority's Case

- 9.1 The following section of this statement sets out the putative reasons for refusal given by the Council in more detail and considers the appeal proposal firstly, on the basis that the titled balance is triggered by virtue of the HDT and then secondly on the basis of there not being a 5YHLS and then both the titled balance and Policy DSP40 being engaged. In both circumstances the primary issues in this appeal remain relevant.
- 9.2 If it is found that the Council does not have a 5 year housing land supply, policy DSP40 operates to allow development to be permitted outside of the settlement boundary - but only should each of the requirements in (i)-(v) be met. Although the tilted balance still applies in such a scenario, a failure to comply with DSP40 is a matter which carries very substantial weight and, in cases like this, should be determinative of whether permission is granted because the Development Plan provides that these requirements must be met, having already taken into account the lack of a 5 year supply. The Plan contemplates that only sites meeting these requirements can come forward to meet the lack of a 5 year supply.
- 9.3 It is the Council's position that it has a 5 year supply but fails the housing delivery test. In these circumstances policy DSP40 is not engaged. It follows that criterion (i)-(v) cannot operate to enable the proposed development for housing outside of the settlement boundary to escape the fundamental constraints of settlement boundary policy. Even if the developer hypothetically succeeded in meeting the policy objectives identified in (i)-(v) permission should be refused because the development is outside the settlement boundary and great weight must be attached to that policy harm. It follows that the Appellant operates in a more onerous policy framework which means that very substantial principal harm must be attributed to the fact that the development is outwith the settlement boundary (as outlined above). Furthermore, the fact that 3 of the 5 requirements in DSP40 would not be met is an indication of the extent of the specific and also substantial harm which weighs very heavily against the development when the tilted balance is applied. This is because, the Development Plan provides that these requirements are so important that, even in the absence of a 5 year supply, permission should be refused unless they are all complied with.
- 9.4 The Council's case, in either scenario, is structured as follows:
- Reason for refusal a) – principle of development

- Reason for refusal b) – harm to character and appearance of the countryside
- Reason for refusal c) – impact on the strategic gap
- Reasons for refusal d) – g) - impact on ecology including European Protected Sites
- Reason for refusal h) – loss of best and most versatile agricultural land
- Reason for refusal i) – highway safety and inconvenience
- Reasons for refusal j - n) - failure to secure details of the SuDS strategy, open space, affordable housing provision, education provision and a travel plan
- Failure to comply with LPP2 Policy DSP40

Reason for refusal (a) – Principle of Development

9.5 Deemed Reason for refusal (a) reads:

"The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside."

9.6 Policy CS2 (Housing Provision) of the adopted Core Strategy states that priority should be given to the reuse of previously developed land within the urban areas. Policy CS6 (The Development Strategy) goes on to say that development will be permitted within the settlement boundaries. The application site lies within an area which is outside of the defined urban settlement boundary.

9.7 Policy CS14 of the Core Strategy states that:

"Built development on land outside the defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agriculture, forestry, horticulture and required infrastructure."

9.8 Policy DSP6 of the Local Plan Part 2: Development Sites and Policies states that there will be a presumption against new residential development outside of defined urban settlement boundaries (as identified on the Policies Map).

9.9 The site is clearly outside of the defined urban settlement boundary and the proposal is therefore contrary to Policies CS2, CS6 and CS14 of the

adopted Core Strategy and Policy DSP6 of the adopted Local Plan Part 2: Development Sites and Policies Plan.

Reason for refusal (b) - harm to character and appearance

9.10 The deemed Reason for refusal (b) reads:

"The application site lies outside of the defined urban settlement boundary within the open countryside. The proposed development would result in a range of significant adverse landscape and visual effects, harmful to the landscape character, appearance and function of the countryside and failing to respect or respond positively to the key characteristics of the surrounding area"

9.11 The Site and its landscape setting are characterised by their open character as part of the gently sloping Alver Valley, their use as large predominantly arable fields with weak hedgerows, and the important role that they play in preventing the further coalescence and preserving the individual character of Fareham and the Woodcot suburb of Gosport.

9.12 The Council's published landscape sensitivity assessment has determined that the sub-area of the Woodcot/Alver Valley Local Landscape Character Area in which the Site is located is of high landscape sensitivity to development, with very little scope to accommodate development. It acknowledges the impact of the recent construction of Newgate Lane East in reducing the integrity of the area but concludes that this would in fact increase the sensitivity of the area to further development. This sensitivity will be further exacerbated by the construction of the consented scheme for 99 dwellings to the south of the site.

9.13 The development proposals represent a large-scale residential development, significantly larger than any scheme considered within this landscape to date, which would act in combination with the recently approved scheme to the south to entirely eliminate the open character of the Woodcot/Alver Valley, and to reduce the rural component to a small collection of arable fields to the north of Peel Common, which are unlikely to remain viable as an agricultural unit. Whilst it is noted that a field in the western part of the scheme is proposed to be retained, this is anticipated to comprise a combination of public open space and engineered sustainable urban drainage features, and therefore its rural integrity and character would still be permanently lost.

9.14 The illustrative development design itself is a relatively bland and generic collection of perimeter blocks of residential development, and a significant

proportion of the open space within the scheme is given over to storm water attenuation. Whilst a linear park is retained in association with an existing hedgerow, this is truncated in two places by main vehicle routes and flanked by another route, and it is further breached in three places by lesser access routes, therefore it is highly unlikely to function as an effective green infrastructure corridor. Other public access areas are restricted to corners of the scheme, where 'pocket parks' coincide with areas of planting for visual screening. All of these factors indicate that response to the prevailing character and the creation of high-quality places were not significant considerations in the design of this scheme.

- 9.15 Whilst it is noted that the planting proposals within the illustrative scheme would result in some reduction in the level of change within the landscape with time as it matures, it is unlikely that this will be to the extent that it would reduce the impact of development within this highly sensitive and inappropriate location to an acceptable level.
- 9.16 It is therefore concluded that the proposed development, by nature of its scale and design is inappropriate in principle within this highly sensitive location, and that it would bring about a significant and permanent adverse change in the character of the area and the complete loss of any remaining rural integrity. The illustrative scheme represents a generic design response to the character of the area, and fails to minimise landscape harm, or to recognise the inherent character and beauty of the countryside.
- 9.17 The inappropriateness of residential development within this landscape is highlighted by the findings of the two Inspectors who have heard appeals in recent years.
- 9.18 In the case of the unsuccessful conjoined appeal for up to 190 dwellings on land to the south-west of the appeal site, Inspector Jenkins determined that the development in this location would result in significant harm to the landscape of the area, and significant harm to the character and appearance of the area.
- 9.19 In the case of the successful appeal for up to 99 affordable dwellings directly to the south of the site, Inspector Jones determined that the proposals would harm the character and appearance of the area and would fail to minimise landscape harm as required by local planning policy.
- 9.20 It is therefore the case that both Inspectors who have considered the implications of residential development within this part of the Alver Valley have found it to result in harm to the character and appearance of the landscape. The current scheme is significantly larger than the previous

proposals in terms of both area and quantity, and therefore it stands to reason that the landscape harm will be greater still.

Reason for refusal (c) – impact on the Strategic Gap

9.21 The deemed Reason for refusal (c) reads:

The proposed development would physically and visually reduce the separation between settlements significantly adversely affecting the integrity of the Strategic Gap;

9.22 The site is located within the Fareham-Stubbington Gap, and the stated purpose of the Study Area in which the Site is located (Area 8) is to prevent the coalescence of Fareham, Stubbington and Gosport.

9.23 The scale and location of the proposed development is such that it would result in significant coalescence between Fareham and Gosport, with only formal open spaces remaining in the space between these areas. This is anticipated to significantly reduce the integrity of the Strategic Gap in this location, to the extent that Fareham and Gosport could no longer be described as separate settlements.

9.24 The Site currently performs an important role with regard to the perception of the Gap, in terms of the sense of leaving Fareham and entering the Alver Valley countryside when travelling in both directions along Newgate Lane East, and this role will become more important with the delivery of the recently consented scheme to the south of the appeal site, which will amplify the importance of this site as an open asset. The proposed creation of a new roundabout on Newgate Lane East is also anticipated to further urbanise this route and erode the perception of a pause between settlements.

9.25 The importance of the experience of the Strategic Gap along Newgate Lane East as a break between settlement areas is highlighted by Inspector Jenkins, who in paragraph 81 of his decision identifies Newgate Lane East as the key vehicle route from which to experience the Gap. He identifies the character of this area as being predominantly characterised by undeveloped countryside. He therefore concludes at paragraph 82 that the introduction of 190 dwellings into this landscape would “*cause significant harm to the Fareham-Stubbington Gap and the physical and visual separation of settlements*”.

9.26 In paragraph 84 of his decision, Inspector Jenkins highlights the level of sensitivity of the sites he was considering, stating that “*the impact on the*

integrity of the Strategic Gap would be greater than would be likely to be the case if the same scale of development were to be located to the east of Newgate Lane East, next to an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap". Given the relevance to land that is the subject of the current appeal, it is important to note that Inspector Jenkins does not say that development to the east of Newgate Lane East would be acceptable in terms of effects upon the Gap, and this should not be inferred from his statement. It is also a relevant consideration that the current appeal scheme is approximately twice the size of the scheme considered by Inspector Jenkins, and therefore likely to result in significantly greater impacts.

- 9.27 Strategic Gap issues were also considered by Inspector Jones in his decision regarding the land directly to the south of the site [paragraphs 29 to 33]. This Inspector found that the scheme directly to the south of the current appeal site would not minimise adverse effects upon the character and appearance of the Strategic Gap because of its prominence from the existing urban boundary.
- 9.28 In terms of the effect upon the integrity of the Strategic Gap, Inspector Jones referred to Core Strategy Policy CS22, which states the development proposals "*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*". The Inspector judged that the modest size of the development in question (99 dwellings) relative to the overall size of the Gap, and its location on the edge of the Gap adjacent to a settlement boundary were such that "*there would not be a significant effect on the integrity of the Gap, be it individually or cumulatively*". In making this statement, the Inspector was only considering the development in front of him and aligning his statement with the exact wording of Policy CS22. There is no suggestion that Inspector Jones was considering any development cumulatively with the development in front of him, and the Inspector was not aware of the current appeal scheme when the judgement was made, therefore it could not have been a cumulative consideration. Equally, the Inspector was aware that the former draft HA2 housing application had been withdrawn prior to the appeal, and therefore this could not have been a valid consideration.
- 9.29 In visual terms, the Council's recently published Technical Review of its Strategic Gaps identifies a number of important views across the site, in particular between the urban edges of Woodcot and the ribbon development along Newgate Lane, with the open character of the site emphasising the open, shallow nature of the Alver Valley. Furthermore, the belt of mature oak trees on the eastern boundary of the site is identified

as playing an important role in containing the urban character of Woodcot and separating it from its adjacent countryside.

- 9.30 The implications of the proposed development would be that these identified views across and along the Alver Valley would be lost, as would the sense of transition between the urban edge of Woodcot and adjacent agricultural countryside.
- 9.31 Taking all of these matters into consideration, it is concluded that the proposed development would fail to protect the integrity of the Strategic Gap and would result in the physical and visual coalescence of Fareham and Gosport, as well as the loss of the sense of passing through countryside along Newgate Lane East. The granting of permission for the scheme to the south of the site on appeal, in spite of its failure to comply with local Strategic Gap policies CS22 and DSP40(iii), has placed this landscape at a tipping point at which any further development is anticipated to result in a complete loss of its rural integrity and character, and the individuality and identity of settlements. It is therefore imperative that this be preserved in accordance with the current and emerging Development Plans.

Reasons for refusal (d) to (g) – Ecology

- 9.32 Reason for refusal (d) reads:

The proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional nutrients entering the water environment of The Solent and the absence of appropriate and appropriately secured mitigation;

- 9.33 A nutrient calculation submitted with the planning application, within 'Report To Inform Habitats Regulations Assessment Stage 1 And Stage 2 (Inc. Nitrate Mitigation Statement) by TetraTech, January 2022, uses a now out-of-date calculation methodology. A revised calculation using the methodology provided by Natural England in April 2022 is awaited. The appellant's Statement of Case para 7.115 states that an update will be provided shortly.
- 9.34 Until such time as a revised calculation is received, accepted as accurate, and any subsequent mitigation is agreed, this reason for refusal still stands.
- 9.35 Reason for refusal (e) reads:

In the absence of appropriate and appropriately secured mitigation, the proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional recreational disturbance arising from residents of the development;

9.36 The cumulative impact of residents of the new development on the Solent SPAs and New Forest European sites can be mitigated for by financial contributions to relevant strategies. The appellant in its Statement of Case paras 7.106 and 7.107 explains that these contributions have not yet been secured by legal agreement.

9.37 Until such time that a S106 agreement has been completed to secure these payments, this Reason for Refusal still stands.

9.38 Reason for refusal (f) reads:

The proposal would have likely adverse effects upon the integrity of Habitat Sites and the wider Solent Waders and Brent Goose network due to the unacceptable loss of functionally linked Special Protection Area habitat. Insufficient information has been provided to demonstrate that adequate mitigation for the loss of Secondary Support Area and Low Use Areas is being provided;

9.39 The appeal site comprises land used by Waders and Brent Geese which primarily use the SPA but also use other land to ensure their winter survival. Part of the site is a Secondary Support Area and part is a Low Use site according to the Solent Waders and Brent Geese Strategy.

9.40 It is not inappropriate for the Winter Bird Mitigation Area at Old Street, previously allocated to a development west of Newgate Lane East, to be re-allocated as part mitigation for the appeal development.

9.41 A new 2ha Winter Bird Mitigation Area is proposed on the appeal site, and outline design and management proposals have been submitted. It would be secured from public access with ditches and security fences, screened from disturbance by hedgerows and would contain appropriately managed grassland. A SUDS feature would be present. Natural England, and subsequently the Council's Ecologist, have expressed uncertainty that the new Winter Bird Mitigation Area would be sufficient based on size, limited sight lines and uncertainty regarding the potential for informal access by people and dogs. Natural England advises that further measures are sought to address the loss.

9.42 Similar arguments were made by the Council regarding a proposed 4.5ha Winter Bird Mitigation Area on a recent appeal for Land South of Romsey Avenue, Portchester (**FBC15**). In that case, the Winter Bird Mitigation Area was proposed to mitigate for the loss of land forming a Primary Support Area, i.e. land used by Waders and Brent geese to a greater extent than the Secondary Support Area and Low Use Sites. The Inspector in that case did not agree with arguments about uncertainty, and she was certain in that case that the proposed mitigation was suitable.

9.43 The Council considers that the detailed design of both the Winter Bird Mitigation Areas needs to be provided, management plans are needed, and the cost of provision and management in perpetuity need to be calculated.

9.44 A S106 agreement is required to secure the provision of the sites, the money for management, and the management in perpetuity. Until such time the S106 is in place, the Reason for Refusal stands.

9.45 Reason for refusal (g) reads:

The applicant has failed to provide sufficient evidence to demonstrate that the development would not result in unacceptable harm to protected species that may be present on site or affected by its development;

9.46 The appellant's Statement of Case para 7.103 confirms that species surveys are not complete and acknowledges that the data is required for certainty [of impact assessment and mitigation needs]. Until such time that the surveys are complete, and have been used to inform updated and satisfactory impact assessment and mitigation design, the Reason for Refusal stands.

Deemed reason for refusal (h)

9.47 Reason for refusal (h) reads:

The proposal would result in the loss of best and most versatile agricultural land;

9.48 Policy CS16 seeks to prevent the loss of the best and most versatile (BMV) agricultural land. The application site is identified as a mixture of Grade 3a and 3b Agricultural Land. Grade 3a is classified as the best and most versatile (BMV) agricultural land. The application was supported by a Statement on Agricultural Land. Approximately 59% of the site is classified as Grade 3a, with the remaining being Grade 3b which is not considered

best and most versatile. The proposal would be contrary to Policy CS16 and the permanent loss of BMV agricultural land weighs against granting planning permission in the balance of issues.

Deemed reason for refusal (i)

9.49 *Reason for refusal (i) reads:*

The applicant has failed to demonstrate the development would not result in an unacceptable impact on highway operation and safety, nor that the development can be accommodated in a manner that would not cause increased danger and inconvenience to highway users, including those travelling by sustainable modes. On this basis the proposed development would result in a severe impact on the road network;

9.50 In respect of Reason for Refusal i) the Highway Authority requested further information in order to assess the acceptability of the proposals as summarised below:

- *A WCHAR review of routes to the catchment schools and amenities within Stubbington.*
- *Consideration of improvements for cyclists on Wych Road, between Tukes Avenue and the Henry Cort Way.*
- *Consideration of Redlands Lane cycle improvements, between the northern end of Henry Cort Way and The Gillies.*
- *Agreement of a contribution of 16,000 towards the provision of Real Time Information (RTI) at Tukes Avenue bus stops.*
- *A sensitivity junction model test for the proposed site access in the 2037 future year scenario, uplifted to the recorded ATC flows.*
- *A 2037 future year assessment utilising the ATC flow volumes for Newgate Lane East.*
- *Revise the traffic flow diagrams to include the bypass straight ahead lane at the Newgate Lane/ Speedfield business park roundabout.*
- *Extend traffic flow diagrams to include the Gosport Road/ Palmerston Drive junction and associated Newgate Lane flyover.*
- *Consideration of PIA mitigation at Newgate Lane/ A32 Gosport Road interchange.*
- *Address comments relating to the design of the proposed pedestrian and cycle accesses.*
- *Address comments relating to the proposed southern emergency access link.*
- *Consideration of lighting of the Brookers Lane/ Woodcot Lane pedestrian and cycle link.*
- *Consideration of cycle improvements on the route to the catchment schools of Wallisdean Infant and Junior and Fareham Secondary Academy at, and north of, Longfield Avenue.*

- *Agreement of a contribution of £42,000 towards the producing and delivering School Travel Plans for the catchment schools.*
- *Address comments relating to the design of the proposed roundabout site access.*
- *Inclusion of the catchment schools in the pedestrian and cycle demand forecasts.*
- *Amend the routing and journey times for the destinations noted and resubmit a revised traffic distribution.*
- *Confirm the distribution of Welborne Garden Village committed development trips from the A27 Gosport Road.*
- *Compare queue length data with the baseline models to ensure the base models are validated to observed conditions. Calibrate baseline models if necessary.*
- *Geometry drawings for all off-site highway junction models.*
- *Updated modelling using a one-hour profile rather than direct flow input for the proposed site access.*
- *Confirm that HGV percentages are derived from traffic survey data.*
- *Clarify the discrepancy between the 18.91m effective flare length shown on drawing ITB10353-GA-105 and the 52.1m coded in the site access junction model.*
- *Provide modelling to reflect the current scheme being constructed at Peel Common roundabout.*
- *Address the modelling comments relating to Newgate Lane/ HMS Collingwood Access/ Speedfields Park junction.*
- *Address the modelling comments relating to Brookers Lane Toucan Crossing.*

9.51 At the time of preparing this Statement of Case, it has not been demonstrated that the traffic implications of the proposals will not cause any unacceptable impacts on the highway network. There are some areas of agreement between the Highway Authority and the Appellant's transport consultant (i-Transport), however, as set out above there are areas of the assessment approach and methodology that are not agreed; amendments to the assessment methodology are required, as is further information. This includes amendments to the design of the proposed means of vehicular access to the site (a new four-arm roundabout on Newgate Lane East), and assessment of traffic impacts of this access and the scheme proposals beyond the site. In the Highway Authorities opinion, it has not been adequately demonstrated at this time that the new access will not have a significant impact on traffic flows on Newgate Lane East and that the proposed development will not cause unacceptable impacts on highway safety or the wider local highway network. Based on the information submitted to date, the Highway Authority cannot confirm there is no conflict with policy DSP40.

9.52 The Highway Authority consider that there are an adequate range of amenities within suitable walking and cycling distance of the site, and that public transport opportunities are acceptable; however this is subject to

confirmation that the proposed access strategy can be delivered and confirmation and agreement of off-site connectivity and improvements in order to access these amenities by sustainable modes. This requires expansion of the assessment of walking and cycling routes undertaken in the WCHAR to include catchment schools. These matters are fundamental, remain outstanding and require resolution prior to the Highway Authority considering the site as acceptable in terms of sustainable modes access. With regard to the Framework Travel Plan, this is considered to be acceptable as submitted by the Highway Authority.

- 9.53 Vehicular access to the site is proposed from Newgate Lane East through the delivery of a new four-arm roundabout junction. The Highway Authority are satisfied that, in broad geometry terms, the proposed access roundabout is acceptable; however, further amendments are required to the design before it can be considered acceptable in principle by the Highway Authority. These amendments will impact on the operation of the proposed roundabout. As such, updated modelling will be required before the Highway Authority can agree the forecast impact of this roundabout and comment on the impact of the proposals. A Road Safety Audit and designer's response have been submitted, however, following design amendments confirmation from the Safety Auditor will be required confirming no additional concerns result from the design amendments. At this time, the Highway Authority cannot confirm that the local highway network can accommodate the traffic generated by the development during the peak periods without resulting in a 'severe' residual cumulative impact to the network operation or unacceptable traffic implications. Therefore it also cannot be confirmed that the proposals are in accordance with the policies set out in the NPPF and Policy DSP40.
- 9.54 Regarding the wider traffic impact of the proposed development, the Highway Authority accepts some elements of the assessment, however, further information and amendments to the assessment methodology (including traffic assignment, which is not agreed at this time) and junction modelling are required. Further assessment is being undertaken by iTransport and will be presented to the Highway Authority during the course of the appeal. While the required additional information may overcome the Highway Authority's objections, until this information is received and reviewed the Highway Authority cannot confirm that the scheme proposals will not result in a 'severe' residual cumulative impact.

Reasons for refusal (j – n) - failure to secure details of the SuDS strategy, open space, affordable housing provision, education provision and other local infrastructure requirements

9.55 Reason for refusal (j) reads:

"Had it not been for the overriding reasons for refusal, the Council would have sought to secure the details of the SuDS strategy including the mechanisms for securing its long-term maintenance through an appropriate legal agreement"

9.56 Hampshire County Council as lead Flood Authority have no objection to the principle of the SuDS arrangement set out in the MasterPlan.

9.57 Reason for refusal (k) reads:

"In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan"

9.58 To comply with the requirements of Local Plan Part 1 Policy CS18, the appeal development must include the provision of 40% affordable housing comprising a blend of affordable tenures. Subject to appropriate size, mix and tenure being agreed to meet the identified local need, the Council considers this could be appropriately secured in a unilateral undertaking or agreement.

9.59 Reason for refusal (l) reads:

"In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met"

9.60 Open space provision will need to accord with the requirements set out in Local Plan Part 1 Policy CS21 and the Council's adopted Planning Obligations SPD (**FBC16**). The majority of the open space is proposed to be located on the western side of the site between the proposed dwellings and Newgate Lane East, with green corridors shown throughout the site and around the periphery. The Council's Open Spaces Manager has commented that the indicative open space layout is acceptable, but SuDS will have impacts on the open spaces which will need to be considered at the detailed design stage. Suitable play facilities should be provided for a development of this size.

9.61 Reason for refusal (m) reads:

"In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and the provision of a surety"

mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are in place to assist in reducing the dependency on the use of the private motorcar."

9.62 The appellants have committed to preparing and Travel Plan and providing the funding for various highways improves that would be required as a result of a development of this size in this location.

9.63 Reason for refusal (n) reads:

"In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met"

9.64 It is anticipated that a suitable financial contribution towards education provision in the local area would address reason for refusal (g).

9.65 It is assumed that the appellants wish to submit a unilateral undertaking prior to the inquiry for the Council to consider and dialogue would soon begin on the content of developer obligations. It is therefore anticipated that the above issues may be resolved beforehand with at the very least both parties being able to update the Inspector on their respective positions at the inquiry.

Consideration of Appeal Scheme Against LPP2 Policy DSP40 if there is not a 5YHLS

9.66 In the absence of a Five Year Housing Land Supply, Policy DSP40 of the adopted Local Plan Part 2: Development Sites and Policies is engaged.

9.67 Policy DSP40: Housing Allocations, of Local Plan Part 2, states that:

"Where it can be demonstrated that the Council does not have a five-year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

- i. The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall;*
- ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*

- iii. *The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. *It can be demonstrated that the proposal is deliverable in the short term; and*
- v. *The proposal would not have any unacceptable environmental, amenity or traffic implications”.*

9.68 The Council considers the appeal proposal to comply with parts i) and iv). There is conflict with parts ii), iii) & v).

9.69 Each of these five bullet points are worked through in turn below:

Policy DSP40 (i)

9.70 The resultant shortfall from moving the Welborne trajectory forward one year will be a marginal amount in the 5 year Housing Land Supply Provision. The proposed development would result in approximately 375 dwelling being constructed, which would make a significant contribution towards achieving a 5-year housing land supply provision. It is therefore considered that criteria (i) of Policy DSP40 is passed.

Policy DSP40 (ii)

9.71 In respect of Policy DSP40(ii) there are four different policy requirements that must be met. Firstly, whether the proposal would be sustainably located. Secondly, whether the site is adjacent to the existing urban settlement boundary. Thirdly, that the development is well-related to the existing settlement boundary. Fourth, that the development would be capable of being well-integrated with the existing neighbouring settlement.

9.72 The site is located immediately adjacent to and well related to the existing defined urban settlement boundary of Woodcot and Bridgemary within Gosport Borough and lies immediately to the south of the Fareham Urban Settlement Boundary. Consideration of the accessibility of the site to the neighbouring settlements was set out in Section 8(c) paragraphs 8.20 – 8.29 of the Committee Report. Section 8(c) highlights that on balance the site would be sustainably located. However, having regard to the comments raised by the Appeal Inspector for the site to the south of the appeal site criteria (ii) of DSP40 should also be considered from a landscape and visual impact perspective (paragraph 26 of the Appeal Decision). Despite its location, and connectivity to the north and proposed development to the south, the proposed development would remain largely cut off and isolated from the remainder of the built-up area to the east. It

is therefore considered that the proposals would not be well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement, and would therefore fail to fully comply with criteria (ii) of Policy DSP40.

Policy DSP40 (iii)

- 9.73 The site is located within the open, undeveloped countryside which presently form part of the important Fareham/Gosport/Stubbington Strategic Gap. Criteria (iii) recognises that any development in the countryside is likely to have an impact due to the nature of urban expansion; however, that harm should be minimised. The scale and extent of the proposed development, and its resultant coalescence and loss of openness would be significant. Detailed consideration of the impact of the development on this landscape setting and the Strategic Gap have been set out above in paragraphs 9.9 - 9.30. The landscape assessment set out in 9.9 – 9.19 includes detailed consideration of the impact from the Council’s Landscape and Visual Impact consultants would result in significant harm to local landscape character and the physical and visual coalescence of settlements. The development would fail to comply with criteria (iii) of Policy DSP40 as it fails to minimise the impact on the countryside and Strategic Gap.

Policy DSP40 (iv)

- 9.74 The supporting Planning Statement submitted with the application highlights that the two developers (Miller Homes and Bargate Homes) are major housebuilders and are committed to the early delivery of the proposals. They anticipate the delivery of between 250 and 300 houses within a five year period, with an immediate commencement on site if permission was granted. The scheme is therefore considered to be deliverable in the short term, and criteria (iv) of Policy DSP40 is therefore passed.

Policy DSP40 (v)

- 9.75 The final test of Policy DSP40 requires that the proposal does not have any unacceptable environmental, amenity or traffic implications.
- 9.76 Matters regarding environmental implications have been set out earlier in this SoC in respect of: Impact on Habitat Sites; Ecology and Protected Species; and, loss of agricultural land.

- 9.77 The Statement of Case has set out conflict with various policies of the Local Plan, and subsequently there are significant identified environmental implications as a result of the development which would result in conflict with this part of Policy DSP40 (v) Environmental Implications. In particular the loss of Grade 3a agricultural land puts the development in conflict with DSP40 (v).
- 9.78 As the application has only been submitted in outline, a detailed assessment of amenity implications has not been fully considered in the Committee Report. The indicative masterplan provided with the application shows a good level of separation between the existing houses in Gosport Borough and the location of the allowed appeal scheme to the south of the site to ensure that the living conditions of these occupiers would not be adversely impact by the development proposal. Additionally, the applicants have highlighted that there would be a 2 storey height limit for the proposed housing, and with the proposed green infrastructure, it is likely that the scheme could be acceptable in amenity terms in order to comply with this criteria of Policy DSP40 (v) Amenity Implications.
- 9.79 The final aspect of DSP40 (v) is consideration of Traffic Implications. Matters regarding Highway Impacts have been set out in paragraphs 9.49 9.54 above. The proposal includes a number of pedestrian and cycle links to surrounding developments, although impact for future school pupils regarding accessibility for catchment area schools has been raised as a concern by the Local Education Authority. Further, as set out in the Committee Report, the Highway Authority has raised objection to the proposal, and it has therefore been concluded that if the outstanding issues that they have identified are not capable of being resolved then the proposal would conflict with this part of Policy DSP40 (v) Traffic Implications.
- 9.80 Having regard therefore to the overall consideration of Policy DSP40, the development proposal would fail to accord with Parts (ii), (iii) and (v) of the Policy.

10.0 Planning Balance and Conclusions

10.1 As noted above, the Council resolved that, had it been able to determine the appeal application, it would have refused permission. The proper approach to determining this appeal is set out at Sections 8 and 9 of this statement.

10.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

"if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

10.3 As set out in paragraph 8.13 above, the effect of paragraph 182 of the NPPF is that: *"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitat sites (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site".*

10.4 The effect of NPPF paragraph 182 means that if having carried out an Appropriate Assessment it is concluded that the proposal is likely to have an adverse effect on the integrity of a habitats site, then the application can be determined in accordance with Section 38(6) under the 'straight' balance. In this particular case the Officer recommendation would have been to refuse planning permission so it would not have been necessary for the authority to carry out an Appropriate Assessment. As the application is the subject of appeal, it will fall to the Inspector as the Competent Authority to undertake an Appropriate Assessment, in the event he is minded to grant planning permission.

10.5 As set out at 9.2 and 9.3 above, if it is found that the Council does not have a 5 year supply, policy DSP40 operates to allow the developer out of the strict constraints of settlement boundary policy - but only should each of the requirements in (i)-(v) be met. Although the tilted balance still applies in such a scenario, a failure to comply with DSP40 is of the utmost weight and, in cases like this, should be determinative of whether permission is granted because the Development Plan provides that these requirements must be met, having already taken into account the lack of

a 5 year supply. The Plan contemplates that only sites meeting these requirements can come forward to meet the lack of a 5 year supply.

- 10.6 It is the Council's position that it has a 5 year supply but fails the housing delivery test. In these circumstances policy DSP40 is not engaged. It follows that criterion (i)-(v) cannot operate to enable the proposed development for housing outside of the settlement boundary to escape the fundamental constraints of settlement boundary policy. Even if the developer hypothetically succeeded in meeting the policy objectives identified in (i)-(v) permission should be refused because the development is outside the settlement boundary and great weight must be attached to that policy harm. It follows that the Appellant operates in a more onerous policy framework which means that very substantial principal harm must be attributed to the fact that the development is outwith the settlement boundary (as outlined above). Furthermore, the fact that 3 of the 5 requirements in DSP40 would not be met is an indication of the extent of the specific and also substantial harm which weighs very heavily against the development when the tilted balance is applied. This is because, the Development Plan provides that these requirements are so important that, even in the absence of a 5 year supply, permission should be refused unless they are all complied with.
- 10.7 In this appeal, the site is outside of the defined urban settlement boundary and the proposed development does not relate to agriculture, forestry, horticulture and required infrastructure. The principle of the proposed development of the site would be contrary to Policies CS2, CS6 and CS14 of the Core Strategy and Policy DSP6 of the Local Plan Part 2: Development Sites and Policies.
- 10.8 The development would harm the landscape character, appearance and function of the countryside contrary to Policies CS14 and CS17. It would also physically and visually reduce the separation of settlements of Fareham, Gosport and Stubbington and in doing so significantly adversely affect the integrity of the Strategic Gap, contrary to Policy CS22. The proposal would result in the loss of best and most versatile agricultural land.
- 10.9 Hampshire County Council in its capacity as the highway authority has raised objection to the proposals as currently submitted and concluded they would be contrary to the NPPF as well as the Council's adopted policies, although for the purposes of the Planning Balance it has been assumed that all of their concerns can be satisfactorily addressed.
- 10.10 The Council has furthermore concluded that there would be likely significant effects upon Habitat Sites as a result of additional nutrients

(nitrates) generated by the development entering The Solent, the loss of functionally linked habitat, and recreational disturbance to Habitat Sites following occupation. As with Highway matters above it is assumed, for the purposes of the Planning Balance, these matters can be addressed to the satisfaction of the LPA.

- 10.11 The Council will show that it has carefully weighed the benefits which would be delivered by the proposals, namely the provision of up to 375 dwellings, including a policy compliant proportion of affordable housing on the site. However, it remains of the view that the harm identified above and conflict with the development plan outweighs the benefits arising from the scheme.
- 10.12 If having carried out an Appropriate Assessment, the Inspector judges that the proposal would not adversely affect the integrity of the HS, then the application, given that the policies of the Local Plan must be considered out-of-date by virtue of the Housing Delivery Test results, must be determined in accordance with paragraph 11(d) of the NPPF. In this instance, limb (i) of paragraph 11(d) would be met (there would be no clear policies in the NPPF that protect areas or assets of particular importance) and the application would fall to be determined under limb (ii), applying the presumption in favour of sustainable development – the ‘tilted balance’ wherein the planning balance is tilted in favour of sustainable development and against the Development Plan.
- 10.13 In summary, in undertaking a detailed assessment of the proposals throughout this SoC, and on the basis that the ‘tilted balance’ is applied to those assessments, the Council consider that in respect of NPPF paragraph 11(d):
- (i) There are no policies within the National Planning Policy Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed; and
 - (ii) Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole.
- 10.14 In light of this assessment, and taking into account all other material planning considerations, the Council conclude that the appeal should be DISMISSED.

No 5YHLS Planning Balance

- 10.15 The Planning Balance set out above reflects the consideration that the Council has an identified 5-year Housing Land Supply provision, and accordingly applies the appropriate weight to the relevant policies of the adopted Local Plan, together with the implications of paragraph 182 of the NPPF regarding the impact on protected Habitat Sites. It then considers that by virtue of the Housing Delivery Test results that the application must be determined in accordance with paragraph 11(d) of the NPPF, and concludes that taking into account all material considerations, the appeal scheme should be dismissed.
- 10.16 In the event that the Inspector concludes that the Council does not have a 5YHLS provision, Policy DSP40 would be engaged and should be taken into consideration as the principal policy for the consideration and determination of this planning application. The final section in Chapter 9 of this SoC highlights the conflict with Policy DSP40, namely criteria (ii), (iii) and (v).
- 10.17 It is necessary to weigh the benefits which would be delivered by the proposals, having regard to the Council's updated 5 year housing land supply position, against the conflict with adopted Local Plan policies. It is considered that the poor relation and integration with the wider urban area to the east, together with the harm to the character and appearance of the countryside, coalescence of settlements and the loss of grade 3a agricultural land would outweigh the benefits arising from the scheme.
- 10.18 In summary, in undertaking a detailed assessment of the proposals throughout this SoC, and assuming that both the 'tilted balance' and DSP40 were applied to those assessments the Council concludes that in respect of NPPF paragraph 11(d):
- (i) There are no policies within the National Planning Policy Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed; and
 - (ii) Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole.

10.19 In light of this assessment, and taking into account all other material planning considerations, the Council consider that the appeal should be DISMISSED.