

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEAL

APPEAL 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

PROOF OF EVIDENCE OF
STEPHEN JUPP MRTPI
ON BEHALF OF
FAREHAM BOROUGH COUNCIL
IN RESPECT OF PLANNING MATTERS

Table of Contents

1	Introduction and Scope of Evidence	Page 2
2	Appeal Development and Site Description	Page 5
3	Background to the Appeal and Putative Reasons for Refusal	Page 9
4	Relevant Planning History	Page 12
5	Planning Policy Context	Page 19
6	Proper Approach to Determining this Appeal	Page 35
7	Weight to be Given to Adopted Development Plan Policies	Page 39
8	The Local Planning Authority's Case	Page 51
10	Planning Balance, Summary and Conclusions	Page 71

Appendices

NB: Any references to Appendices FBC.1 to FBC.16 are those attached to the Council's Statement of Case and which are not included in the Core Document list.

FBC.17 Extract from Appendix C from FBC Statement of Consultation for eLP

1.0 INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1. I am a member of the Royal Town Planning Institute. I hold an Upper Second Bachelor of Arts (Honours) Degree in Town and Country Planning and a Master of Laws with Merit in Environmental Law.
- 1.2. I have been employed for some 34 years in town and country planning. I have been a self-employed planning consultant since April 2000. Previously, I was employed at Chichester District Council and Havant Borough Council.
- 1.3. I handle planning policy, landscape impact and enforcement issues on a daily basis. I have extensive experience in dealing with such issues at planning application stage. I have also given planning policy, landscape impact and enforcement evidence in the High Court and at public inquiries and hearings for both local authorities and developers.
- 1.4. I have been brought in by Fareham Borough Council (the Council) to act on their behalf in connection with appeal proceedings relating to this land. I undertook a site visit in July 2022. I am therefore familiar with the site and its surroundings.
- 1.5. Although I act on behalf of the Council, I understand my professional duty is to assist the Inspector by providing evidence which is true and has been prepared and is given in accordance with guidance produced by the Royal Town Planning Institute. In this regard I can confirm that the opinions expressed are my true and professional opinions.
- 1.6. The appeal was submitted following the LPA's failure to determine an outline application (ref: P/22/0165/OA) for residential development on Land East of Newgate Lane East, Fareham (the 'Appeal Site') within the agreed time period.
- 1.7. At the time of writing my Proof it would appear to me that matters in respect of highways and ecology are likely to be satisfactorily

addressed through additional information, appropriate conditions and legal agreements. In terms of housing supply it is my understanding that at this moment in time the Council is unable to demonstrate that it has a five year supply. On this basis the tilted balance and Policy DSP40 apply. The Housing Delivery Test is also failed and this, on its own, means that the tilted balance is engaged. My evidence proceeds on this basis.

- 1.8. My evidence first sets out the planning policy relevant to these appeals along with the relevant planning history. Then I consider the planning merits of the development, having regard to the latest housing supply figures and other material considerations including the loss of BMVAL; and, draw particularly on the conclusions of the Council's expert landscape witness in respect of landscape and strategic gap matters.
- 1.9. The Council's landscape expert, Ian Dudley, has carried out a detailed analysis of the anticipated landscape and visual impacts of the proposed residential development upon the Site and its setting, along with its impact on the integrity of the Strategic Gap to inform the Inspector's consideration of those main issues. He sets out his independent appraisal of the Site and its landscape and visual characteristics, and the anticipated impacts of the proposed development, based upon the assessment framework within the Lockhart Garratt Landscape and Visual Impact Assessment Methodology.
- 1.10. In the light of this he makes clear in paragraph 1.21 of his Proof, his evidence has been found to support the landscape and strategic gap elements of the Council's putative Reason for Refusal (b) and (c) which read as follows:

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;

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

- 1.11. Drawing on his expert opinion and other material considerations, and assuming that habitat and highway impacts are satisfactorily addressed through conditions and the required unilateral undertaking[s] executed so resolving putative reasons for refusal (d) to (g) and (i) to (n), I find the appeal development to be contrary to Development Plan Policies CS14, CS15, CS17, CS22, DSP6 and DSP40. I also find conflict with paragraphs 126, 130 and 174 of the Framework, and policies DS1, DS2, DS3, HP4, and D1 of the emerging Local Plan. I then undertake a planning balance, weighing up the identified harms against the identified benefits. I conclude planning permission should not be granted. The appeal should therefore be dismissed.

- 1.12. Throughout my proof references are made to documents provided by both sides which are already before the Inspector and now form part of the Core Document list. If a document is listed as a Core Document I will use the prefix "CD" and if the document is not on the CD list then I will use the prefix "FBC" and append it to my proof (unless already appended to the Council's Statement of Case).

2. APPEAL DEVELOPMENT AND SITE DESCRIPTION

The Appeal Development

- 2.1. 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.
- 2.2. 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.
- 2.3. 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.
- 2.4. 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 .
- 2.5. A neighbourhood equipped area of play (NEAP) would be sited within the central green area of open space.
- 2.6. 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.
- 2.7. The application drawings and documents are provided at **CDA.1 to 25.**

Site Description

- 2.8. 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.
- 2.9. 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.
- 2.10. 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.
- 2.11. 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.
- 2.12. With the exception of the hedgerows, there are no internal features within the Site.
- 2.13. 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.
- 2.14. 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.

- 2.15. 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.
- 2.16. 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.
- 2.17. 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.
- 2.18. 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.
- 2.19. 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.

- 2.20. 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. BACKGROUND TO THE APPEAL AND PUTATIVE REASONS FOR REFUSAL

- 3.1 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 (**CDC.1**). An Update report was also provided to the Committee (**CDC.2**) 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].
- 3.2 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 **CDC.3** show).
- 3.3 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.*

3.4 As set out in the Summary Note from the Case Management Conference held on 27 July 2022 it was agreed at that stage, the main issues in this appeal were likely to be:

- Whether the proposed development would be consistent with the policies of the development plan which seek to prevent additional residential development in the countryside and protect the integrity of the Strategic Gap
- The impact of the proposed development on:
 - the character and appearance of the open countryside of the area
 - the integrity of habitat sites and their network, and protected species.
 - highway safety and the operation of the highway network

The Inquiry will also examine other considerations, including whether the Council can demonstrate a five year supply of housing, to be weighed in the planning balance in respect of the proposal.

4. RELEVANT PLANNING HISTORY

Local Plan

- 4.1. In both the Adopted Plan and the Emerging Local Plan the site is not allocated for development. It is in designated countryside, within the strategic gap and is also designated a low use site for Solent Waders and Brent Geese. The site is id 3057 in the SHELAA and was discounted for the reasons identified in that development in this location would have a detrimental impact on the Strategic Gap.
- 4.2. 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. The summary of these are set out in Appendix 2 of the Statement of Consultation (CD005) on the examination library (page 121 - 131) and I have attached this extract at Appendix FBC. 17. This led to the site being removed from the list of potential sites as it was contrary to the emerging development strategy.
- 4.3. As part of the Local Plan evidence base, the Council Commissioned a 'Technical Review of Areas of Special Landscape Quality and the Strategic Gaps' (CDG.6) In relation to this part of the Strategic Gap, the study concluded that *'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.'* The report goes on to say 'Even with the development of Newgate Lane South (the new bypass), 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).

Development Control

- 4.4. There is no recent relevant planning history regarding the appeal site itself. However, there are two recent [June and July 2021] appeal decision letters concerning three appeals in the immediate vicinity of this current appeal which are clearly pertinent to the determination of this appeal. All three appeals 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 (**CDJ.7**) (June 2021)

- 4.5. 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"*.
- 4.6. 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"*.
- 4.7. 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.
- 4.8. With regard to the sensitivity of the landscape, Inspector Jenkins concluded at paragraph 29:

"Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Impact Assessment findings, and contrary to the low/medium findings set out in the LVIA's."

4.9. Inspector Jenkins went on to determine that the development in this location would result in significant harm to the landscape of the area (paragraph 32), and significant harm to the appearance of the area (paragraph 36), even taking into account the illustrative mitigation proposals.

4.10. With regard to the impacts upon the Strategic Gap, Inspector Jenkins found (paragraph 83) that the proposals would "cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements".

4.11. Inspector Jenkins then continued in paragraph 83, stating:

"Furthermore, in my judgement, 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 development within the gap."

4.12. 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."

4.13. 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."

- 4.14. As a result, both appeals were dismissed.
- 4.15. The key point that I consider must be noted here is in respect of Inspector Jenkins' comments in paragraph 83, where he expresses the view that the impact of that appeal scheme is greater than would likely be the case if development were located to the East of Newgate Lane East, is predicated both on (1) the outcome that Peel Common would remain a small, isolated ribbon development within the gap and (2) the development is of the same scale.
- 4.16. In my opinion, Inspector Jenkins' reasoning demonstrates that, in his view, development of the scale and in the location of the proposed development which is the subject of this current appeal, would be equally as harmful if not more harmful than what he was considering in terms of impact on the integrity of the Strategic Gap.
- 4.17. I come to this view because the scale and location of the development, in and of itself, would mean that it would be impossible for Peel Common to remain a small, isolated ribbon development within the gap. The harmful effect would be even greater in combination with the permitted 99 dwellings to the south. Peel Common would become part of the adjoining settlement and all sense of a Strategic Gap in this location would be lost.

Land at Newgate Lane (East) (CDJ.1) (July 2021)

- 4.18. 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)”. It is material to note at this stage that this scheme proposed 100% affordable housing.

- 4.19. 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.”

- 4.20. 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.
- 4.21. The inappropriateness of residential development within this landscape is highlighted by the findings of the two Inspectors who have heard appeals in recent years.
- 4.22. 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.
- 4.23. 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

- 4.24. 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 these previous proposals in terms of both area and quantity, and therefore it stands to reason that the landscape harm will be greater still.
- 4.25. In terms of the effect upon the integrity of the Strategic Gap, Inspector Jones, in considering the Affordable scheme 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.
- 4.26. 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.

5. PLANNING POLICY CONTEXT

- 5.1 By Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 local planning authorities and Inspectors must determine applications for planning permission and appeals in accordance with the development plan (here, so far as relevant, the Local Plan Parts 1, 2 and 3) unless material considerations indicate otherwise. This section of my proof sets out the relevant planning policy framework for the consideration of these appeals.
- 5.2 The relevant planning policy is set out in section 6.0 of the LPA's Statement of Case and addressed in Section 4 of the Planning SoCG [CDL.1].
- 5.3 The following policies are particularly relevant to the issues at this inquiry. I consider that further elaboration is required in order to explain the Council's case.

Local Plan Part 1: Fareham Borough Core Strategy – Adopted 4th August 2011 [CDE.1]

- 5.4 **Policy CS2** (Housing Provision) makes provision for the supply of 3,729 dwellings in the period 2006 to 2026 from various identified sources of supply (none of which is applicable to the Appeal 1 proposal).
- 5.5 **Policy CS4** (Green Infrastructure, Biodiversity and Geological Conservation) makes provision for, among other things, the protection of important habitats. It emphasises that, where possible, sites will be enhanced. It specifically addresses mitigation of impacts on European sites and states that "Development likely to have an individual or cumulative adverse impact [on European sites] will not be permitted unless the necessary mitigation measures have been secured."

5.6 **Policy CS5** (Transport Strategy and Infrastructure) states that 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.*

5.7 **Policy CS6** (The Development Strategy) states that development will be focussed in various specified areas, which do not include the Appeal 1 Site. It goes on to state that, in identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries (which the Appeal 1 Site lies outside of). It states that opportunities will be taken to achieve environmental enhancement where possible. It also states that development which would have an adverse effect on the integrity of protected European conservation sites which cannot be avoided or adequately mitigated will not be permitted.

5.8 **Policy CS14** (Development Outside Settlements) 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 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.'
(emphasis added)

5.9 **Policy CS15** (Sustainable Development and Climate Change) makes clear that the Council will promote and secure sustainable development by directing development to locations with sustainable transport options, access to local services, where there is a minimum

negative impact on the environment or opportunities for environmental enhancement.

5.10 **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,"

5.11 **Policy CS18** (Provision of Affordable Housing) states that, on sites that can accommodate 15 or more dwellings, developers will be expected to provide 40% affordable units.

5.12 **Policy CS20** (Infrastructure and Development Contributions) states that Development will be required to provide or contribute towards the provision of infrastructure through planning conditions, legal agreement or directly through the service provider, and that contributions or provision may also be required to mitigate the impact of development upon infrastructure.

5.13 **Policy CS21** (Protection and Provision of Open Space) states that 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 in accordance with specified requirements.

5.14 **Policy CS22** (Development in Strategic Gaps) makes clear that land within a Strategic Gap will be treated as countryside. The policy continues:

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.

**Local Plan Part 2: Development Sites and Policies – Adopted
8th June 2015 [CDE.2]**

5.15 **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.'*

5.16 **Policy DSP6** (New Residential Development Outside of the Defined Urban Settlement Boundaries) states in part:

'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) *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 existing dwellings.*

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.' (Emphasis added)

5.17 **Policy DSP13** (Nature Conservation) makes provision for the protection of nature conservation interests. The policy states the circumstances in which proposals may be permitted notwithstanding detrimental impacts, though it notes that this does not apply to impacts on SPAs, where stricter tests apply (under the Conservation of Habitats and Species Regulations 2017).

5.18 **Policy DSP15** (Recreational Disturbance on the Solent Special Protection Areas (SPA)) requires mitigation of recreational impacts of development on the Solent SPAs through, among other approaches, financial contributions.

5.19 **Policy DSP40** (Housing Allocations). The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 (Housing Allocations) makes provision for a situation where there is a shortfall in HLS.

5.20 Having set out the approach to allocated sites for housing, DSP40 then addresses the policy approach to be applied where (as is currently the case) a five-year supply of housing cannot be demonstrated:

*"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."*

[my emphasis]

5.21 The supporting text to DSP40 explains at 5.163-4 and 5.166 that:

"5.163 The Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery of both allocations and/or commitments. Therefore, further flexibility in the Council's approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets.

5.164 In order to accord with policy CS6 and CS14 of the Core Strategy, proposals for additional sites outside the urban area boundaries will be strictly controlled...

5.166 Protecting the character and beauty of the countryside is an important objective and so the careful design of any proposal will be a key consideration. Any proposal must be adjacent to an existing urban area boundary and sensitively designed to ensure it is as well related, and integrated, to the neighbouring settlement as possible. Proposals that minimise the impacts on the countryside and, where relevant, Strategic Gaps will be preferred. Any proposal will also need to demonstrate that there will be no unacceptable environmental, amenity or traffic implications and that all other relevant Policies in the Local Plan have been duly considered."

- 5.22 This policy was found sound by the Local Plan Inspector in his May 2015 report on the LPP2 (**CDE.4**). The Inspector recommended that the policy was modified to include criteria for residential development to be considered against in the context of a HLS shortfall. The adopted policy was modified in line with the Inspector's recommendations. Policy DSP40 is 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 land supply cannot be demonstrated. The inherent flexibility in DSP40 ensures that the Policy maintains consistency with the emphasis at NPPF Paragraph 60 on '*significantly boosting the supply of homes*', whilst providing decision-makers with a framework to ensure that other considerations (including environmental considerations) – the importance of which are also recognised by national policy - are addressed.

Local Plan Part 3: The Welborne Plan – Adopted June 2015

- 5.23 The Welborne Plan (LPP3) is the third part of the Council's Local Plan and was adopted in June 2015. LPP3 is a site-specific plan which sets out how the new community of Welborne, to the north of the M27 Motorway at Fareham, should take shape over the period to 2036. Apart from considerations relating to Housing Land Supply, LPP3 is not relevant to the consideration of the appeal proposals.

Emerging Local Plan 2037

- 5.24 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).
- 5.25 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 (CDF.5) for publication under Regulation 19. The consultation opened ran for six weeks from 18th June 2021 until 30th July 2021.
- 5.26 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.
- 5.27 The Council's current Local Development Scheme (LDS) (CDF.6) was adopted in June 2021. The Council has met the timetable for submission for independent examination (Autumn 2021). The Local Plan Examination Hearings started on Tuesday 8th March 2022 and ended on Tuesday 5th April 2022.
- 5.28 On 6th June 2022 the Inspector issued a Post Hearing Letter [CDF.8] to which the Council responded on 8 August 2022 [CDF.11]. In respect of the inspector's initial concerns on the deliverability of Welborne, the inspector's further letter of 5 September 2022 [CDF.13] states at paragraph 5:

"My Post Hearing letter expressed concern about the delivery of this site in light of delays in the anticipated programme. Having also read the updated information from the site promoter (set out in their response to the consultation on the Housing Supply Topic Paper, FBC094), the suggested delivery of 150 homes in

2024/25 and a build rate of 250 dwellings per annum is justified. The Housing Topic Paper (FBC090) and the Trajectory in Appendix 1 of the Plan will need to be reviewed and updated accordingly."

- 5.29 No soundness issues have been identified in respect of the Councils emerging development strategy.
- 5.30 On the basis of the foregoing, it is clear that the emerging Plan is now at a relatively advanced stage. Taking into account the recent judgement in *Worthing Borough Council v SoS for Levelling Up, Housing and Communities and Persimmon Homes (Thames Valley) Ltd* [Case CO/1221/2002] at CDK.7 and especially paragraph 105, where Mrs Justice Lang DBE found that *"it would be irrational not to treat the emerging policies as material considerations, which ought to be considered in reaching a decision"*. I consider that substantial weight can be attached to the relevant policies within the emerging plan.
- 5.31 The appeal site would be within the countryside within a Strategic Gap in the emerging Local Plan. Chapter 3 of the Plan sets out the Council's Development Strategy with all 3 policies [DS1, DS2 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.
- 5.32 **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 and, if relevant, do not significantly affect the integrity of a Strategic Gap, and*
 - m) Are not on Best and Most Versatile agricultural land.*

5.33 **Policy DS2** relates to strategic gaps and the policies map shows that the whole of the appeal site would be within the Strategic Gap. In this regard DS2 states:

In order to prevent the coalescence of urban areas and to maintain the separate identity of settlements, Strategic Gaps are identified as shown on the Policies map between the following areas:

- 1) Fareham / Stubbington and the Western Wards (Meon Gap)
- 2) Fareham / Bridgemary and Stubbington / Lee-on-the-Solent (Fareham-Stubbington Strategic Gap)

Development proposals will not be permitted where they significantly affect the integrity of the gap and the physical and visual separation of settlements or the distinctive nature of settlement characters.

5.34 In respect of the area within which the appeal site lies, paragraph 3.46 states:

Further to the east, retaining gap will help maintain the separation of Stubbington and Lee-on-the-Solent from Fareham and Bridgemary along with maintaining the separate identity of Peel Common.

5.35 The supporting text at 3.47 makes clear that:

The principle of major development within the strategic gaps is not established. Any development proposals will need to demonstrate how they could be developed in a manner which meets the tests within the policy. Information on settlement identity, location and scale of development as well as how any edge treatments could retain the physical and visual separation of settlements will be required.

5.36 **Policy DS3** relates to Landscape and states:

"Areas of Special Landscape Quality have been identified in the Borough and are shown on the Policies map. Development proposals shall only be permitted in these areas where the landscape will be protected and enhanced. Development in the countryside shall 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.*

Major development 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."

- 5.37 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.
- 5.38 **Policy H1 (Housing Provision)** makes provision for at least 9,560 net new homes in the period 2021-2037 provided from various specified sources including 55 new homes from part of the Appeal 1 site.
- 5.39 **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.
- 5.40 **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.

- 5.41 **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.
- 5.42 **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.
- 5.43 **Policy NE3 (Recreational Disturbance on the Solent Special Protection Areas (SPAs))** requires mitigation of recreational impacts of development on the Solent SPAs.
- 5.44 **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.
- 5.45 **Policy NE10 (Protection and Provision of Open Space)** requires residential development to provide open and play space to meet the needs of new residents. The emerging policies map allocates the part of the Appeal 1 site outside the HA10 allocation, and the Appeal 2 site as public open space.
- 5.46 **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.
- 5.47 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."

5.48 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*

5.49 **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."*

5.50 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."

National Planning Policy Framework (2021)

5.51 The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (see paragraph 2) but also emphasises that the planning system should be genuinely plan-led (paragraph 15).

5.52 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.

- 5.53 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.
- 5.54 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.
- 5.55 Paragraph 48 of the Framework confirms, weight may be given to relevant policies in emerging plans when determining applications for planning permission (depending upon the stage of preparation, the extent of any unresolved objections, and the degree of consistency with the Framework).
- 5.56 To support the Government's objective to significantly boost the supply of housing, Paragraph 59 of the NPPF states that it is important

that a sufficient amount and variety of land can come forward where it is needed.

- 5.57 NPPF Paragraph 110 requires that new development ensures appropriate opportunities to promote sustainable transport modes can be provided. A safe and suitable access for users and any significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated to an acceptable degree.
- 5.58 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.
- 5.59 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.
- 5.60 Paragraph 174 of the Framework requires decisions to recognise the intrinsic character and beauty of the countryside [174b].
- 5.61 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.

6. PROPER APPROACH TO DETERMINING THESE APPEALS

The Section 38(6) test

- 6.1 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

- 6.2 Paragraph 60 of the NPPF seeks to significantly boost the supply of housing.
- 6.3 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.
- 6.4 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."*

6.5 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."

6.6 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

6.7 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".

6.8 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.

6.9 Paragraph 83 of the Funtley Road Lane appeal decision (CDJ.6) 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."

6.10 The Council considers this to be the correct approach.

6.11 The appeal proposal is likely to have significant effects on habitats sites as set out in deemed reasons for refusal (d) to (f).

6.12 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

- 6.13 Provided the further information referred to at 9.31 to 9.46 of the Councils Statement of Case 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).
- 6.14 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.
- 6.15 If the Inspector concludes (following an appropriate assessment) that the proposal will not adversely affect the integrity of habitats sites, and that the Council does not have a 5YHLS, then the tilted balance will be engaged by that factor and the HDT, and Policy DSP40 will apply.

7 **WEIGHT TO BE GIVEN TO ADOPTED DEVELOPMENT PLAN POLICIES**

Introduction

- 7.1 The weight to be afforded to LPP1 and LPP2 policies has been considered in a number of recent appeal decisions. First, I address the most recent decisions as these seem to me to be the most relevant. I then offer my conclusions on these policies along with the weight to be attached to policies within the emerging LP.

DSP40 Appeal Decisions

- 7.2 In the case of the *Land West of Old Street, Stubbington* (CDJ.28), [January 2019] as with other recent appeals, Inspector Downes did not agree the precise extent of the shortfall but considered it to be substantial.
- 7.3 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."

- 7.4 In the next appeal on *Land East of Posbrook Lane, Titchfield* (CDJ.27), for 150 dwellings [April 2019] 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... These are two significant policies [DSP5 and DSP40] where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole."

- 7.5 At paragraph 39 she acknowledged that due to the housing land supply situation in Fareham the conflict with those policies has reduced weight and policy DSP40 is engaged.

- 7.6 In the final paragraph of the decision letter Inspector Stone concludes the Planning Balance and states:

"Notwithstanding the substantial benefits that would flow from the proposed development there would also be very substantial harms. In this case the conflict with the development plan and the environmental harm that would ensue to the countryside within the valued landscape of the Lower Meon Valley is of compelling importance and outweighs the many advantages of the scheme. I have considered all other matters raised but have found nothing to change my conclusion that this would not be a

sustainable form of development and that the appeal should not succeed.”

7.7 In the *Land East of Downend Road, Portchester* appeal decision [CDJ.3] there was a difference of 2.26 years between the HLS position of the Appellant (2.4 years) and the Council (4.66 years). In this decision letter, dated 5th November 2019, at paragraph 90, Inspector Gould erred on the side of caution and considered the Appellant’s housing figures to better represent the then current situation. However, notwithstanding this fact, he concluded at paragraph 97 that:

“I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.”

7.8 In the case of *Land at Newgate Lane (North) and Newgate Lane (South), Fareham* (CDJ.7) Inspector Jenkins did not see a need to determine the precise extent of the shortfall but considered it to be substantial.

7.9 Inspector Jenkins found at paragraph 15 that, in the absence of a five year supply, the weight to be afforded to Policies CS14, CS22 and DSP6 was reduced because of their restrictive effect, and would be outweighed by compliance with Policy DSP40.

7.10 Under the heading ‘Planning Balance’, at paragraph 104, Inspector Jenkins found that:

104LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements.

7.11 Inspector Jenkins went on to give “little weight” to the identified conflicts with policies CS14, CS22 and DSP6 (Paragraph 106).

7.12 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 and south) appeals at paragraphs 108 to 112 of his decision letter and due to their relevance, I repeat them in full 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.

112. 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.

7.13 I note that since Inspector Jenkins' decision the 5 year supply shortfall has reduced to between 3.5 and 4.95 years which indicates that policy DSP40 is working. Furthermore, the eLP, containing housing allocations is at an advanced stage and the Welborne scheme has a projected delivery of 150 homes in 2024/25 with a build rate of 250 dwellings per annum thereafter. All of which means that considerable work is being done by the Council to boost the HLS. On this basis it is my view that full weight should be applied to DSP40.

7.14 In the case of *Land at Newgate Lane (East)*, June 2021 (CDJ.1), the affordable scheme, the Inspector used the LPA's figure of 3.57 years as a benchmark to assist in making his decision (paragraph 45).

7.15 At paragraph 13 Inspector Jones notes that it was common ground between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:

ii Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;

iii Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and

v. Would not have any unacceptable environmental ... implications.

7.16 At paragraph 16 Inspector Jones refers to the Peel Common decision [Newgate Lane (North) and (South)] in respect of the weight to be attributed to certain policies, stating:

"I agree with his conclusion that LP1 Policies CS2 and CS6 are out-of-date in the terms of the Framework and that against this background, the weight attributable to conflicts with Policies CS14 and CS22 of the LP1 and LP2 Policy DSP6 is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements."

7.17 In the planning balance the Inspector says the following at paragraph 46:

"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."

7.18 The next DSP40 appeal decision letter is dated 10th January 2021 [CDJ.2] concerning land East of Crofton Cemetery, Stubbington and I have set out a number of relevant paragraphs from that decision below.

7.19 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.

7.20 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...”

7.21 In the planning balance Inspector Jordan concludes at paragraph 70:

“The development would conflict with policies CS2, CS6 and CS14 of the CS and DSP6 of the LP due to its location outside a defined settlement. However, although it would lead to some localised harm to the character and appearance of the countryside, it would nonetheless comply with policy DSP40, which is to be applied in circumstances where the aforementioned policies have failed to deliver an adequate supply of housing in the district. Having regard to the impetus in the Framework to significantly boost the supply of housing, and the aims of DSP40, I am satisfied that conflict with CS2, CS6, CS14 and DSP6 is outweighed by compliance with DSP40.”

7.22 The next inquiry was for a reduced scheme on Land East of Posbrook Lane, Titchfield, reducing the number of dwellings proposed from 150 [as set out in the appeal at 7.4 above] to 57. This decision is dated 25th February 2022 and is at CDJ.4.

7.23 Paragraphs 105 to 118 considered ‘The development plan as a whole’ and with regard to DSP40 Inspector Rose concluded at 117:

“Policy DSP40 is fundamental and serves as the single most important policy for determination of this appeal³ It renders the development plan substantively up-to-date and I afford the policy full and overriding weight.”

7.24 In that case the scheme was considered to be in compliance with DSP40.

7.25 Finally, the most recent public inquiry in respect of DSP40 concerned Land South of Funtley Road, Fareham [CDJ.6]. In this case there was an extant consent for 55 dwellings which now formed draft allocation HA10, albeit that allocation included a slightly larger developable area. The appeal scheme was for up to 125 dwellings and would not extend beyond the limits of the HA10 allocation but the council considered the site could accommodate in the region of 70-80 dwellings as opposed to the 125 dwellings proposed.

7.26 At paragraph 86 Inspector Underwood agreed with the Councils

approach that policy DSP40 carries substantial weight¹, but concluded that there was compliance with DSP40.

Minimising Harm to the Countryside / Strategic Gap

7.27 Minimise is a normal English word meaning to make small or insignificant – to reduce something to a level that is minimal. That this is the correct meaning to apply is apparent from Inspector Stone’s decision in relation to *Posbrook* (CDJ.27). He reasoned the breach of Policy DSP40 in relation to character harm as follows:

- Paragraph 26-7: although landscaping would ameliorate visual harm to some extent the landscape and visual effects would still be substantial and harmful in the short to medium term and albeit this would reduce in the longer term, he would still view the adverse effect as significant;
- Paragraph 31: overall the development would result in material harm to the character and appearance of the area;
- Paragraph 68: The harm he has identified in relation to the landscape results in a conflict with the relevant criteria within DSP40 and for the reasons given in paragraph 31 this results in a conflict with that part of DSP40.

7.37 Similarly Inspector Downes in the *Land West of Old Street, Stubbington* decision (CDJ.28) reasoned a breach of Policy DSP40 as follows:

- Paragraphs 23-4: there would be an overall significant and harmful effect on landscape character even after mitigation;
- Paragraph 28: there would be a moderate harmful effect on views reducing to moderate-minor over 15 years;
- Paragraph 29: this represented long term, permanent and adverse change;
- Paragraph 39: The harm she identified in relation to landscape resulted in a conflict with DSP40 because the proposal would fail to minimise any adverse impact on the countryside

¹ It should be noted that I set out in my proof in that case that I considered ‘very’ substantial weight should be attached to DSP40.

7.28 In the Newgate Lane (North and South) appeals (CDJ.7) Inspector Jenkins addressed the issue of 'minimise' at paragraph 21. He considered, in the light of the purpose of DSP40(iii), any new housing development in the countryside would be likely to register some adverse landscape and visual effect. He concluded:

Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

7.29 Finally, Inspector Jones in the Affordable housing appeal south of the current appeal site referred to the issue of 'minimise' at paragraph 28 and broadly agreed with the approach of Inspector Jenkins.

7.30 I consider on a true construction of those decision letters, the Inspectors have interpreted DSP40(iii) as providing a mechanism to allow development outside of the settlement boundary even in the face of the necessary harm which that would cause to the spatial strategy. However, to use the exact wording of Inspector Stone there would be a breach if harm was "material" or to use the words of Inspectors Downes there would be a breach if harm was "significant".

7.31 It follows that if it is found that the development would result in landscape or strategic gap harms, whether that be to character, views or integrity, which is termed as material or significant, then the harm has not been minimised for the purposes of DSP40(iii) and there is a breach.

Conclusions on the weight to be afforded to Policy DSP40

7.32 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.

7.33 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.

- 7.34 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, for the reasons set out above, full weight in the planning balance and conflict with it should therefore be a matter of the greatest consideration.

Conclusions on the weight to be afforded to Other Policies

- 7.35 As a result of the absence of a five-year housing land supply, I accept that policies CS2, CS6 and DSP6 are 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. In previous appeals I have given those policies, or parts thereof, which specifically relate to the provision or location of new housing limited weight due to the housing supply shortfall.
- 7.36 Moreover, Core Strategy policy CS14 and LP2 policy DSP6 both contain criteria which to seek to control development which would adversely affect landscape character and appearance – this reflects 174b of the Framework, such that the landscape protection elements of those policies are consistent with the NPPF and, therefore should in my view attract significant weight.

Weight to be Given to Emerging Local Plan Policies

- 7.37 I consider that matters have now moved forward with the progress of the emerging local plan. I have previously set out that I consider that its relatively advanced stage is such that substantial weight can be attached to its policies. The emerging plan retains the appeal site within the countryside and within a strategic gap.
- 7.38 It is my view that the LP Inspector's post-hearing advice letter is such that she does not have any outstanding concerns about the soundness of the Council's overall spatial strategy. In particular, the principle of restricting development outside the built-up area boundary and no concerns have been expressed about the drafting of emerging Policy SP6 in respect of Strategic Gaps. I therefore consider that substantial weight should be attached to the relevant policies of the emerging plan.

How should NPPF Paragraph 11(d) be applied?

- 7.39 The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Sir Keith Lindblom, Senior President of Tribunals in the Court of Appeal in the case of *Monkhill Ltd v SSHCLG* [2021] EWCA Civ 74 [CDK.8].
- 7.40 The Appeal proposal does not, in my view, accord with the development plan and so does not fall within paragraph 11(c) of the NPPF.
- 7.41 NPPF Footnote 8 explains that 'the most important' development plan policies in determining planning applications for housing are 'out-of-date' where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
- 7.42 NPPF 11(d), which I set out in section 5 above, provides two tests. It is the correct approach (see *Monkhill*) to apply these tests sequentially, the first test being whether there are policies within the

Framework which provide a clear reason for refusing the Appeal Development.

- 7.43 I consider that there are policies of this type in the Framework, as referenced at footnote 7 of paragraph 11(d) ('habitats sites'). In respect of 'habitats sites' it has not yet been established that there would be no adverse effects on the integrity of any European Sites (see section 8 of my Proof), though this issue is likely to be resolved on finalising and executing a section 106.
- 7.44 As I have explained, if the habitats issues are not resolved, there is likely to be a statutory bar to the Appeal scheme. If, on the other hand, the Inspector concludes (following an appropriate assessment) that the Appeal proposal will not adversely affect the integrity of habitats sites, the tilted balance will be engaged given the Council's inability to demonstrate a 5YHLS and the HDT.
- 7.45 On application of the tilted balance, I consider that the adverse impacts significantly and demonstrably outweigh the benefits, as I explain in section 10 below.

8 THE LOCAL PLANNING AUTHORITY'S CASE

8.1 In his Summary Note following the CMC the Inspector identified the main issues in Appeal 1 are likely to be:

- Whether the proposed development would be consistent with the policies of the development plan which seek to prevent additional residential development in the countryside and protect the integrity of the Strategic Gap
- The impact of the proposed development on:
 - the character and appearance of the open countryside of the area
 - the integrity of habitat sites and their network, and protected species.
 - highway safety and the operation of the highway network

8.2 It is my understanding that ecology and highway matters will be satisfactorily resolved prior to the commencement of the inquiry with the main issues being covered within their respective Statements of Common Ground.

8.3 On this basis will I address each of the 2 remaining issues below, as well as other pertinent matters, under the following headings issues: (i) housing land supply; (ii) principle of the development and effect of the Scheme on the integrity of the strategic gap; (iii) effect of the Scheme on the Character and Appearance of the Area; and, (iv) mitigation. I draw heavily on the expert the evidence of Ian Dudley on landscape and strategic gap matters.

8.4 My evidence in this section and the subsequent section on the planning balance is based upon the premise that the Council does not have a 5YHLS and that the titled balance and DSP40 are triggered, as set out in the first issue below.

Issue 1 – Housing Land Supply

- 8.5 At the time of completing my Proof, the Council’s witness for Housing matters, Alex Roberts, has not completed his Proof of Evidence nor is there an agreed SoCG.
- 8.6 In respect of the latest draft Housing SoCG that I have seen it would appear that the positions of the respective parties are as follows:
- The LPA’s position, based on our calc of LHN is 4.95 years.
 - The Appellant’s position, based on Appellant calc of LHN is 3.5 years.
- 8.7 Given that it is highly likely to be agreed between the Council and the Appellant that the housing land supply for Fareham is between 3.5 years and 4.95 years, and the Council and Appellant are not inviting the Inspector to draw a conclusion on where the land supply lies within the agreed range.
- 8.8 I have taken the view, that in either case the Council is unable to demonstrate that it has a 5YHLS. On this basis – as well as its failure to meet the Housing Delivery Test - the tilted balance is triggered and Policy DSP40 is applicable.
- 8.9 For the purpose of my planning balance, I can confirm at this stage that I will attribute substantial weight to this matter.

Issue 2 – Spatial Strategy and Strategic Gap

Spatial Strategy

- 8.10 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."

- 8.11 Deemed Reason for refusal (h) reads:

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

8.12 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.

8.13 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."

8.14 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).

8.15 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.

8.16 Policy CS16 makes clear that new development will be expected to safeguard the use of natural resources by, inter alia, preventing the loss of the best and most versatile agricultural land.

8.17 In respect of the eLP 3037, the Development Strategy is set out in section 3 and includes the following policies:

- Strategic Policy DS1: Development in the Countryside
- Strategic Policy DS2: Development in Strategic Gaps
- Strategic Policy DS3: Landscape

8.18 Paragraph 3.6 of the draft explanatory text to Policy DS1 explains the strategy in the following way:

The important factors that have helped shape the spatial expression of the development strategy are listed below;

- *Landscape and countryside*
- *Settlement boundaries and the desire to respect settlement identity*
- *Climate change, flood zones and coastal management areas*
- *Protected areas for nature conservation and recreational purposes*
- *Transport corridors and opportunities to encourage more active travel modes*
- *Need to encourage diversity in the housing market (by encouraging a mix of small, medium and larger sites)*
- *Sustainability and accessibility to services*
- *The requirement to meet our housing and employment need.*

8.19 Paragraph 3.10 builds upon bullet point 2 in respect of settlement identity and states:

The need to respect settlement boundaries and protect the identity of our key settlements has been a strong influence on planning decisions to date. Two strategic gaps have long been established in the Borough; one in the Meon valley and the other between the settlements of Fareham and Stubbington. Strategic gaps have been retained but they have been re-defined in the Publication Plan to focus on preventing settlement coalescence. For this reason, it was necessary to undertake a careful review to ensure that the strategic gap performs the function of supporting the retention of settlement identity. Independent evidence was commissioned to support this review, 'Technical Review of Areas of Special Landscape Quality and the Strategic Gaps', which is available alongside the Publication Plan. Again, this policy direction has been driven as a response to the NPPF and recent planning appeals where the function, and strength of, the strategic gaps were called into question.

8.20 The eLP continues at 3.18 by making clear that the Development Strategy has been used to determine the suitability of proposed sites for development, alongside a wide range of other factors that are more appropriate at a more localised level such as the need to protect

and enhance the historic environment, ecological issues and factors related to environmental health.

8.21 With regard to BMV the eLP makes clear at 3.35 that:

It is important that when determining applications for housing and economic development, the benefits of protecting the Best and Most Versatile (BMV) agricultural land are considered against the need for development. The Borough would not be able to meet its identified housing and employment needs on previously developed (brownfield) land, and greenfield sites of lower agricultural quality, alone. For this reason, the allocation of residential development on BMV agricultural land in this Plan has been necessary to meet the identified housing and employment need. As such, it is vital the Council seeks to protect the remaining BMV agricultural land within the Borough.

8.22 On the basis of this Development Strategy, Policy DS1: Development in the Countryside states:

Proposals for development in the countryside, which is defined as land outside the Urban Area boundary as shown on the Policies map, will be supported where the proposal:

- a) Is for development associated with an existing lawful dwelling, or*
- b) Is proposed on previously developed land and appropriate for the proposed use, or*
- c) Is for retail, community and leisure facilities, tourism or specialist housing where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere; or*
- d) Is for a new or replacement building, conversion and/or extension within an existing educational facility (as identified on the Policies map) and would not result in the loss of playing fields and/or sports pitches unless it can be demonstrated that these facilities are no longer required or they can be adequately replaced elsewhere on site or,*
- e) Is for housing development compliant with one of the following policies; HP1, HP2, HP4, HP5, HP6 or HP11, or*
- f) Is for employment development compliant with one of the following policies: E1 or E5, or*
- g) Is for a new small-scale employment development to convert or extend an existing building, or replace a redundant or derelict structure, or*

h) Provides infrastructure that meets an overriding public need.

In addition, proposals will need to demonstrate that they;

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 and, if relevant, do not significantly affect the integrity of a Strategic Gap, and

l) Maintain the character of the undeveloped coast, and

m) Are not on Best and Most Versatile agricultural land.

8.23 On the matter of loss of BMVAL², The development will result in the loss of some 10.8ha of Grade 3a 'good quality' BMVAL. Reflecting the conclusion reached in a number of recent housing appeals in the District, it is common ground that the loss of BMVAL would not in itself be sufficient to warrant refusal of planning permission when DSP40 is engaged. Nevertheless, the increased emphasis within the eLP to avoid its loss beyond allocated sites and the larger site area in this appeal result, in my view, of it clearly being a harm to which moderate weight must be attributed to it in the overall planning balance.

8.24 The importance of settlement identity is set out in paragraphs 3.43 to 3.46 of the eLP, with 3.44 stating:

"Strategic gaps have been retained but the policy and the spatial designation has been tightened to focus on preventing settlement coalescence."

8.25 With respect of the area within which the appeal site lies, paragraph 3.46 makes clear that:

"retaining the gap will help maintain the separation of Stubbington and Lee-on-the-Solent from Fareham and

² Best and Most Versatile Agricultural Land as defined by the Framework: Land in Grades 1, 2 and 3a of the Agricultural Land Classification.

Bridgemary along with maintaining the separate identity of Peel Common."

8.26 In this regard eLP Policy DS2 makes clear that development proposals will not be permitted where they significantly affect the integrity of the gap and the physical and visual separation of settlements or the distinctive nature of settlement characters.

8.27 Mr Dudley addresses the impact on the strategic gap in his Section 7 and at 7.3 he refers to the recent Technical Review of Areas of Special Landscape Quality and Strategic Gaps (2020) [CDG.6] noting in bold the finding that there should be:

"No development in the Woodcot-Alver Valley Landscape Character Area (LCA8) as it would result in coalescence between Gosport and Fareham"

8.28 In terms of the effects of the Appeal development on the Strategic Gap these are set out in 7.4 to 7.13 of his Proof.

8.29 At 7.5 and 7.6 he draws on the findings of the Fareham Landscape Assessment at page 157 and refers to the following findings:

"Intrusive development within the area would inevitably erode the visual and physical separation that currently exists and potentially alter the character of the landscape settings of the two settlements from predominantly agricultural to predominantly urban.

Ultimately, the function and integrity of the area as farmland could be significantly eroded to the point where the gap becomes a corridor of greenspace between urban areas, or an 'urban park', rather than a functioning area of agricultural landscape with a distinct character and identity."

and

"could potentially erode the integrity of the existing gap if it is regarded as forming a potential new edge for development" and that "If the rural, undeveloped and open character of this area is to be maintained, it will be crucial to keep the urban boundaries as tightly drawn as possible and avoid infilling the land between the existing urban edges and the new road."

8.30 At 7.7 he considers that the Appeal development would be acting in direct contravention of this published advice. He continues:

"The development of this area, located in a part of the valley that sits between the main settlement areas of Fareham and Gosport, would result in the physical, visual and perceptual coalescence of these areas, and the reduction of the eastern part of the Fareham-Stubbington Gap to a narrow belt of public open space and remnant arable land that is unlikely to function as a viable agricultural unit."

8.31 At 7.8 Mr Dudley is clear that from a review of his bulleted summary of the recommendations for the Fareham-Stubbington Gap that the appeal scheme would be contrary to a number of these recommendations. In particular, he finds conflict with:

- the third bullet would not be met by locating a substantial development in the Woodcote-Alver Valley Landscape Character Area directly in the space between Fareham and Gosport.
- The fifth bullet would not be met through the complete elimination of north-south views along the land to the east of Newgate Lane East, acting alongside the permitted development to the south, and
- the sixth bullet would not be met through the coalescence of Fareham, Bridgemary and Peel Common into a single large, coalesced urban area.

8.32 At 7.9 he refers to the fourth bullet, and is of the view that development in this location would be in direct opposition to the stated purpose of establishing a Green Infrastructure Strategy for this area, which is to ameliorate the existing creep of urban fringe characteristics. Here he considers that:

"the appeal scheme would breach a well-defined settlement edge that serves to contain this influence, fundamentally altering the character of the surrounding countryside."

8.33 He therefore concludes at 7.10:

It is therefore clear that the appeal scheme would result in significant harm to the integrity of the Strategic Gap, because it would act in direct contravention to the Council's strategic aims for this area, is located in the area found to be most sensitive to development, and would result in the physical, visual and perceptual coalescence of Fareham and Gosport. This is supported by the findings of my landscape appraisal above, which considered the open character of the countryside as a receptor and concluded that this would experience an adverse impact of Major adverse significance.

8.34 He considers, and I agree, [at 7.12 and 7.13] that this view is consistent with the findings of the two previous Inspectors who have considered development in this landscape, namely:

"Inspector Jenkins in paragraph 83 of his Decision found that 190 dwellings, approximately half of the number under consideration in this appeal, within this landscape would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements. It therefore stands to reason that 375 dwellings would result in significantly greater harm than that considered by the Inspector.

The scheme that Inspector Jones considered was approximately a quarter of the number of dwellings of the appeal scheme, and whilst he took the modest size of the 99-dwellings affordable scheme into account, he nonetheless concluded that the effect on the physical and visual separation of settlements would be reasonably significant and failed to meet the requirements of the Local Plan policy. Again, it stands to reason that a scheme four times the size would result in a significantly higher degree of harm."

8.35 At 8.4 Mr Dudley strongly disagrees with the appellant's LVIA where it also seeks to challenge the Site not being included in areas to be taken out of the Gap, stating at paragraph 8.36 that *"it would be logical and appropriate for the study to conclude that the boundary of the Strategic Gap be amended to omit this part of the landscape"*. He does not agree with this conclusion, and considers that it is not supported by his own findings, especially because the Technical Review is explicit in paragraph 12 on page 109 that *"it would be inappropriate to develop in LCA8: Woodcot-Alver Valley, as it would result in coalescence between Gosport and Fareham."* This

specifically relates to this part of the landscape, and specifically advises against the change that the Appellant is attempting to effect.

8.36 Finally, in section 8 he refers to the Appellant's interpretation of Inspector Jones' decision, with specific reference to their interpretation to the Inspector's use of the phrase "*individually or cumulatively*" in his paragraph 31. The implication made within the Appellant's LVIA is that Inspector Jones was referring to land other than the Site but Mr Dudley disagrees with this interpretation. He considers, and I concur with his view, that the Inspector was simply repeating the terminology enshrined within Core Strategy Policy 22 and was not referring to any specific (or general) area of land or implying that wider development would be acceptable – had this been the case then both Mr Dudley and myself consider that the Inspector would have said this.

8.37 At section 9 of his Proof he sets out his strategic gap conclusions at 9.27 to 9.29 which I repeat in full below:

Strategic Gap Conclusion

9.25 The proposed development would represent an incongruous incursion into the established Strategic Gap, and would result in the physical, visual and perceptual coalescence of the settlements of Fareham and Gosport, which the Site currently serves to separate.

9.26 The scale of the development is such that in combination with the permitted scheme to the south, the Strategic Gap would be entirely eliminated in this location, with no sense of passing between settlements when travelling on Newgate Lane East. Development in this location is in direct contravention of the recommendations within both the Fareham Landscape Assessment and the Technical Review of Areas of Special Landscape Quality and Strategic Gaps. As identified by Inspector Jenkins in his recent Decision, change of this magnitude would tip the balance of this landscape towards a predominantly urban character.

9.27 I therefore conclude that the proposed development would result in a significant impact upon the integrity of the Strategic Gap, and that my evidence supports the Council's third reason for refusal.

- 8.38 I agree with expert opinion of Mr Dudley that proposed development would represent an incongruous incursion into the established Strategic Gap, and would result in the physical, visual and perceptual coalescence of the settlements of Fareham and Gosport, which the Site currently serves to separate. Moreover, the scale of the development is such that in combination with the permitted scheme to the south, the Strategic Gap would be entirely eliminated in this location, with no sense of passing between settlements when travelling on Newgate Lane East. As Mr Dudley makes clear, development in this location is in direct contravention of the recommendations within both the Fareham Landscape Assessment and the Technical Review of Areas of Special Landscape Quality and Strategic Gaps. Moreover, as identified by Inspector Jenkins in his recent Decision, change of this magnitude would tip the balance of this landscape towards a predominantly urban character.
- 8.39 I consider these identified unacceptable impacts of the development give rise to conflict with paragraph 174(b) of the NPPF, Policies CS6, CS14 and CS22 of the Core Strategy and Policies DSP6 and DSP40(ii) and (iii) of the LPP2, as well as with policies DS1, DS2, and HP4(c) of the emerging Local Plan. I further consider that those elements of Policies CS17 and DSP40 that the development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.
- 8.40 I also conclude that the proposal would be contrary to Policy CS16 and DSP40(v) along with eLP DS1(m) and HP4(e). Whilst CS16 seeks to prevent the loss of BMVL Grades 1, 2 or 3a, I accept that its application is slightly more onerous in its restriction than the expectation of the Framework and this reduces the weight to be afforded to that conflict and the harm arising. Nevertheless, the Framework and eLP Policy DS1 seeks to recognise the economic and other benefits of BMVAL and the eLP clearly seeks to strongly resist further loss beyond that which would arise those housing allocations with the eLP.

Issue 2 – Effect of the Scheme on the Character and Appearance of the Area

8.41 Issue 2 forms the final part of the eLPs Development Strategy [DS3] and is a primary consideration within DP policies CS14, DSP6 and DSP40. This issue is addressed by Mr Dudley and in his Proof at 2.23 he notes that a Concept Masterplan has been submitted with the planning application which proposes a generic, perimeter block layout in a similar style to the development to the south that was allowed on appeal. The development is entirely residential with no community buildings, shops or similar provision. He notes, at 2.16, that the illustrative layout preserves the existing site vegetation for a great extent although gaps are created in hedgerows to facilitate access. Additional tree planting is proposed throughout along with vegetation planting in certain locations on the western boundary to reduce the prominence of the built form.

8.42 At 2.19 he notes that the illustrative layout includes a number of internal open space areas, although a significant proportion of this space is given over to sustainable drainage features. A linear park is located between one of the main access routes and a retained hedgerow, and a central green is contiguous with this, which also includes space for a Neighbourhood Equipped Area for Play. Whilst the linear park is retained running parallel to 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 or an attractive place for recreation.

8.43 At 2.20 he concludes his initial observations on the site layout as follows:

"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."

- 8.44 Based upon the evidence of Mr Dudley that the scheme proposals fail to respond to the key characteristics of the area it cannot, in my judgement, constitute high quality design. Accordingly, it will be contrary to policy CS17 and DSP40(v).
- 8.45 In Chapter 3 of Ian Dudley's evidence, he undertakes a Landscape Baseline Appraisal against which he subsequently reviews the development design as presented. Based upon his analysis in Chapter 3, he concludes³ that the landscape receptors of the proposed development are as follows:
- Arable and pastoral land use with variable hedgerows;
 - Open character of the Site and adjacent countryside;
 - Established settlement edge of Bridgemaury;
 - Busy transport infrastructure;
 - Overall character of the Site; and
 - Overall character of the setting of the Site.
- 8.46 In Chapter 4 Mr Dudley undertakes a detailed appraisal of the long-term landscape effects of the scheme, and at 4.44 summarises these landscape impacts as being:
- Arable and Pastoral land use with variable hedgerows: **Major to Major/Moderate adverse.**
 - Open character of the Site and adjacent countryside: **Major adverse.**
 - Established settlement edge of Bridgemaury: **Major/Moderate adverse.**
 - Busy transport infrastructure: **Moderate/Minor adverse.**
 - Overall character of the Site: **Major to Major/Moderate adverse.**
 - Overall character of the setting of the Site: **Major to Major/Moderate adverse.**
- 8.47 It is the conclusion of Mr Dudley's landscape appraisal that the proposed development represents inappropriate development within an established Strategic Gap, and that it would lead to the loss of rural land that performs an important local function in both the separation of settlements and the provision of a setting to

³ Ian Dudley proof, para 3.76

Bridgemaury. He has found that even when the illustrative landscape strategy is taken into account, multiple adverse impacts of Major/Moderate and greater significance would occur upon characteristic features and perceptual qualities of the Site and its setting, and their combined character. He therefore conclude that the proposed developments would result in significant landscape harm.

8.48 In Chapter 5 Mr Dudley undertakes a visual baseline appraisal of the site and its visual envelope and sets out his assessment of the sensitivity of 9 viewpoints.

8.49 In section 6 Mr Dudley presents his appraisal of the anticipated long-term effects of the proposed development upon specific groups of people identified as visual receptors, taking into account the illustrative design information submitted by the Appellants.

8.50 At 6.23 he summarises the visual impacts that he anticipates will arise from the proposed development as follows:

- Users of HMS Collingwood Playing Pitches: **Minor adverse.**
- Users of Meadow Walk Recreation Ground: **Moderate adverse.**
- Users of Public Footpath 084/128/1: **Major/Moderate adverse.**
- Residents of dwellings on the western edge of Bridgemaury: **Major/Moderate adverse.**
- Users of Newgate Lane East: **Moderate adverse.**
- Users of Newgate Lane: **Moderate adverse.**

8.51 In section 7 of his Proof he sets out his assessment of the effects of the Appeal development upon the strategic gap and at 7.3 summarises the recommendations of the recent 2020 Technical Review as follows [his emphasis]:

- Continued designation of the Gap, based upon a clear and continued role and strong sub-regional support;
- Release of land from the Gap in two locations:
 - South of Fareham and west of HMS Collingwood;
 - North-west of Stubbington;

- **No development in the Woodcot-Alver Valley Landscape Character Area (LCA8) as it would result in coalescence between Gosport and Fareham;**
- Implementation of a Green Infrastructure Strategy for Strategic Gap Study Area 8c to enhance the green infrastructure value of the current Gap and ameliorate the existing creep of urban fringe characteristics;
- Highlighting and retaining long north-south views within Study Area 8c to retain a sense of space and 'big skies'; and
- Highlighting and retaining the important east to west 'sense of separation' with Peel Common.

8.52 In section 8 of his Proof he provides a response to the submissions made by the appellants in respect of the evidence base and the comments of the two previous inspectors concerning appeals in this locality.

8.53 At 8.3 he strongly disagrees with the comments of the appellants in respect of sensitivity, making clear that neither Inspector who has recently considered this landscape has called the Sensitivity Assessment into question, and the findings of the published evidence base align with his own findings, which have been supported by the Inspectors on both occasions in preference to those of Pegasus Group as set out in his paragraphs 1.11-1.18.

8.54 At section 9 of his Proof he sets out his conclusions on his visual appraisal at 9.25 to 9.26 which I repeat in full below:

Visual Appraisal Conclusion

9.25 My appraisal of the effects of the proposed development has found a number of adverse impacts of Moderate and greater significance upon residents, and public open space, public footpath and public highway users in the vicinity of the Site, but limited impacts upon receptors beyond the discrete visual envelope in which the Site is located.

9.26 I therefore conclude that the proposed development would cause significant harm to the appearance of the Alver Valley landscape, and that my evidence supports the Council's second and third reasons for refusal.

8.55 On the basis primarily of the conclusions of Mr Dudley on this second issue, I find that the Appeal Proposal fails to: (1) be well integrated with the neighbouring settlement; (2) minimise impacts impact on the countryside; and, (3) would cause significant harm to appearance of the Alver Valley landscape.

8.56 I consider these identified unacceptable impacts of the development give rise to conflict with paragraph 174(b) of the NPPF, Policies CS14 and CS22 of the Core Strategy and Policies DSP6 and DSP40(ii) and (iii) of the LPP2, as well as with policies DS1, DS3, and HP4(b) and (c) of the emerging Local Plan. I further consider that those elements of Policies CS17 and DSP40 that the development would be in conflict with, are consistent with national policy and are the most important development plan policies for the purposes of the determination of this appeal.

DSP40(ii) Whether the proposal is well related to the existing urban settlement boundaries and whether it can be well integrated with the neighbouring settlement.

8.57 As set out in the Update Committee Report at 6.4.12 it is accepted that the site is located immediately adjacent to and well related to the existing defined settlement boundary of Woodcote and Bridgemary.

8.58 However, having regard to the comments raised by the Inspector Jones at paragraph 26 in the Affordable Housing Appeal (to the south of the site) criteria (ii) of DSP40 should also be considered from a landscape and visual impact perspective (paragraph 26 of the Appeal Decision).

8.59 The relevant published character guidance is the Fareham Landscape Assessment (FLA) (LDA Design on behalf of Fareham Borough Council, 2017) which identifies the site as being located within an area defined as LCA 8 (sub area 8.1a), the 'Woodcot/Alver Valley'. It determined sub-area 8.1a as being of high landscape sensitivity with very limited capacity to accommodate development.

8.60 In addition, there is the Technical Review of Areas of Special Landscape Quality and Strategic Gaps published in September 2020. The Technical Review concludes that it would be inappropriate to develop in LCA 8, as it would result in coalescence between Fareham and Gosport.

8.61 As I have indicated at 8.44 above, Mr Dudley has considered one of the landscape receptors to be 'the established settlement edge of Bridgemary'. At 4.44 of his proof he summarises some of the landscape impacts as being:

- Open character of the Site and adjacent countryside: **Major adverse.**
- Established settlement edge of Bridgemary: **Major/Moderate adverse.**

8.62 Mr Dudley considers the overall character of the site at 4.31 and states:

The overall character of the Site is that of an area of open arable farmland forming the separation between the urban edge of Fareham to the north, Bridemary to the east and the ribbon development along Newgate Lane to the west. Its relationship with the urban edge of Bridgemary is controlled by the presence of a belt of mature native vegetation, which contains the settlement and marks a clear distinction between the urban area and the adjacent open countryside, whilst Public Footpath 084/128/1 and its associated hedgerows provides a soft and appropriate edge to Fareham, in combination with the adjacent pasture and playing fields.

8.63 Despite its location, and connectivity to the north and to the proposed development to the south, I consider that the Appeal development would remain largely cut off and isolated from the remainder of the built-up area to the east.

8.64 The lack of connectivity and the strong linear form along the rear gardens of the houses on Tukes Avenue and Pettycot Crescent which backs onto the appeal site mean the development would not be well related, and would be an isolated development from the remainder of the main, neighbouring residential areas to the east. The

development would also breach the existing defensible boundary along the western side of Gosport Borough.

- 8.65 In addition, the lack of access points on the east boundary of the current settlement boundary [there being just one opposite Woodcote Primary School] prevents the site from being well integrated, with long walking distances for many people wanting to get onto Tukes Avenue. This is particularly relevant for those residents who would live more centrally within the proposed housing site.
- 8.66 Consequently, for the landscape and visual impact assessment reasons outlined below, particularly given the extent to which it would project from the existing settlement boundary out into the countryside, the proposed development cannot be said to be well related to the existing settlement boundary nor is it well-integrated with the neighbouring settlement in the terms of Policy DSP40 (ii).
- 8.67 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.

Issue 3 – Mitigation

The Integrity of European Sites

- 8.68 Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) a competent authority is required to undertake an Appropriate Assessment of any plan or project which is likely to have a significant effect on a European site (either alone or in-combination with other projects) and is not directly connected with, or necessary for, the management of the site.
- 8.69 Information to support the Appropriate Assessment is provided within the Newgate Lane East Report to Inform Habitats Regulations Assessment Stage 1 and Stage 2 (Tetra Tech, September 2022) – the 'shadow HRA'.

- 8.70 It will be for the Inspector, as the competent authority, to undertake the Appropriate Assessment.
- 8.71 All parties agree that there are no outstanding ecology matters of concern and the Council no longer considers that there are any ecological reasons for refusal, subject to the completion of the Unilateral Undertakings and imposition of suitably worded conditions.

Open Space (putative RFR(e))

- 8.72 The illustrative masterplan includes provision of public open space which is acceptable in principle in line with Policy CS21 of the Core Strategy, subject to reserved matter applications. The quantum of open space to be delivered, together with the relevant arrangements for its maintenance and management can be secured by legal agreement.

Affordable Housing (putative RFR(f))

- 8.73 The Appeal scheme provides for a total of up to 375 dwellings, including the provision of up to 150 affordable dwellings on site, thus achieving a full policy-compliant 40% affordable housing provision with the exact mix being determined at reserved matters stage.

Education (putative RFR(g))

- 8.74 The requirement for a financial contribution towards education provision will be secured through the unilateral undertaking in agreement with the requirements of Hampshire County Council as the education authority.

Highways (putative RFR(h))

- 8.75 Following the submission of further information from the Appellants, the only outstanding concern from HCC Highways is regarding the principle of access onto Newgate Lane East. I can confirm that FBC do not intend to pursue this matter and, subject to the completion of

the Unilateral Undertakings and imposition of suitably worded conditions, putative Reason for Refusal i is overcome.

9 PLANNING BALANCE, SUMMARY AND CONCLUSIONS

9.1 As I have set out at 6.1, the Inspector is required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to conduct an appropriate assessment of all likely significant effects (i.e. those effects that cannot be excluded beyond a reasonable scientific doubt). It is common ground that there are likely significant effects from the Appeal Development (see the Ecology Statement of Common Ground).

9.2 The requirements for appropriate assessment are summarised in **R (Mynydd y Gwynt Ltd) v Business Secretary** [2018] P.T.S.R. 1274 (**CDK.9**) and **R (An Taisce) v SSECC** [2015] Env. L.R. 2 (**CDK.14**). For the appropriate assessment to be “passed” the Inspector must be certain beyond a reasonable scientific doubt that there will be no adverse effect on the integrity of any European Site in perpetuity. If the Inspector is not certain beyond a reasonable scientific doubt that the Appeal scheme will not (alone or in combination with other plans or projects) adversely affect the integrity of a European Site, permission has to be refused unless the derogation tests under Regulation 64 (the so-called IROPI tests) are met, which the Appellants do not suggest. A planning balance therefore only needs to be conducted if the Inspector is able to exclude any adverse effects on integrity beyond a reasonable scientific doubt.

9.3 In this regard my planning balance proceeds on the assumption that all habitat issues have been resolved and also that open space, affordable housing, education and highways contributions have been secured through the unilateral undertaking.

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

“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".

- 9.5 The Council is currently unable to demonstrate a five-year supply of deliverable housing sites, so under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeal are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application (or appeal) are out of date, this means granting planning permission unless: the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. This approach is reflected in LPP2 Policy DSP1.
- 9.6 The approach detailed within the preceding paragraph has become known as the 'tilted balance' in that it tilts the planning balance in favour of sustainable development, though it does not displace the statutory priority of the development plan. That said, the tilted balance will only apply in this case if footnote 7 is not triggered in respect of habitats. Provided the appropriate planning obligations are secured I do not foresee that footnote 7 would be triggered in this case.
- 9.7 The Framework indicates that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40.

Benefits of the Scheme

- 9.8 In respect of social and economic benefits, the proposals would provide a mix of housing types and styles. They would make meaningful contribution towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. In these respects, the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. Taken together, I give those benefits substantial weight.
- 9.9 Building new homes would generate economic benefits during the construction phase and in the long term through economic activity of occupiers, including those facilities in or close to Bridgemarky. I afford this matter moderate weight.
- 9.10 As expressed by Inspector Underwood in the Funtley appeal additional Council tax revenues cannot be considered to be a benefit as they would in general terms help pay for local authority services used by future occupiers. Therefore, I afford this matter no weight.
- 9.11 Whilst much of the landscaping would be necessary as mitigation against the visual and landscape effects of the development, it would also have the potential to benefit the natural environment with the improvement and creation of habitats and an overall biodiversity net-gain secured by condition. I afford this matter moderate weight.
- 9.12 The other benefits put forward, in relation to environmental and highways improvements, nitrate mitigation and the provision of open space are in fact measures required to mitigate the impacts of the scheme and I have not attributed them weight in the planning balance. This was the approach that the Inspector in the Crofton Cemetery appeal adopted in paragraph 72 of her decision letter.

Harms of the Scheme

- 9.13 As I have set out in 9.7 above, the fact that the Council are unable to demonstrate that there is a 5YHLS means that policy DSP40 is triggered. I accept that LP2 Policy DSP40 is deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider that it does not follow that conflicts with this Policy also attract little weight for a number of reasons.
- 9.14 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. In my opinion, in principle, consistent with the view of Inspector Jenkins [CDJ.7 para 108], this approach accords with the aims of the Framework.
- 9.15 Secondly, it is consistent with the aim of the Framework in 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.
- 9.16 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.
- 9.17 These requirements 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. Whilst I accept that the shortfall in the Framework required five-year housing land supply has persisted for a number of years the evidence from the Councils housing witness demonstrates that it is getting smaller and I cannot agree with the comments of Inspector Jenkins at paragraph 110 that the

balance they strike may be unduly restrictive.

- 9.18 There are a number of DSP40 permissions forming the 'Warsash Cluster' approved by committee and these total some 706 dwellings.
- 9.19 A further 305 dwellings have just been permitted on appeal [East of Down End Road] as the sole issue [safe highway access] was negotiated during the appeal process. Other appeals have been allowed including those at Crofton Cemetery [206 dwellings]; Posbrook Lane [57 dwellings]; and Funtley [125 dwellings]. In all cases inspectors found the schemes to be in compliance with DSP40 having regard to all of the evidence.
- 9.20 Therefore, close to 1500 dwellings have been permitted through DSP40 – this is NOT indicative by a policy that is over restrictive. In terms of other schemes, DSP40 compliance is heavily dependent on site specifics and then the quality of the scheme submitted.
- 9.21 Moreover, although Inspector Jenkins considered that the balance in DSP40 may be over restrictive he dismissed the appeal for reasons including significant harm to the character and appearance of the area and that it would not be sustainably located with reference to accessibility – para 112 of his decision letter.
- 9.22 In terms of conflict with DSP40, having regard to the findings of the various inspectors in the series of appeals that I have set out, I consider that Policy DSP40 should be afforded full weight in the planning balance.
- 9.23 I also consider on a true construction of those decision letters that I have referred to in section 7 of my Proof, the Inspectors have interpreted DSP40(iii) as providing a mechanism to allow development outside of the settlement boundary even in the face of the necessary harm which that would cause to the spatial strategy. However, to use the exact wording of Inspector Stone there would be a breach if harm was "material" or to use the words of Inspectors Downes and Jones there would be a breach if harm was "significant".
- 9.24 It follows that if it is found that the development would result in

landscape or strategic gap harm, whether that be to character, views or integrity, which is termed as material or significant, then the harm has not been minimised for the purposes of DSP40(iii) and there is a breach of DSP40(iii).

9.25 With regard to other Development Plan policies, LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. I accept that it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements.

9.26 I therefore consider below each of the main harms I have set out in section 8 of my proof in respect of DSP40.

Strategic Gap

9.27 As Mr Dudley concludes, the appeal scheme would result in significant harm to the integrity of the Strategic Gap, because it would act in direct contravention to the Council's strategic aims for this area, is located in the area found to be most sensitive to development, and would result in the physical, visual and perceptual coalescence of Fareham and Gosport. I therefore conclude that the proposed development would result in a significant impact upon the integrity of the Strategic Gap, contrary to DSP40(iii). I afford this conflict substantial weight.

Landscape character

9.28 It is the conclusion of Mr Dudley's landscape appraisal that the proposed development represents inappropriate development within an established Strategic Gap, and that it would lead to the loss of rural land that performs an important local function in both the separation of settlements and the provision of a setting to Bridgemaury. He has found that even when the illustrative landscape strategy is taken into account, multiple adverse impacts of Major/Moderate and greater significance would occur upon characteristic features and perceptual qualities of the Site and its setting, and their combined character. He therefore concludes that the proposed developments would result in significant landscape harm. I concur with his findings and as a result it fails to minimise the harm and is therefore in conflict with DSP40(iii). I afford this conflict substantial weight.

Visual Effects

9.29 Mr Dudley's appraisal of the effects of the proposed development has found a number of adverse impacts of Moderate and greater significance upon residents, and public open space, public footpath and public highway users in the vicinity of the Site. He concludes, and I agree, that the proposed development would cause significant harm to the appearance of the Alver Valley landscape. As a result, it fails to minimise the harm and is therefore in conflict with DSP40(iii). I afford this conflict substantial weight.

High quality design

9.30 Based upon the evidence of Mr Dudley that the scheme proposals fail to respond to the key characteristics of the area it cannot, in my judgement, constitute high quality design. Accordingly, it will be contrary to policy CS17 and DSP40(v). Based upon the findings of Inspector Jones in the affordable housing appeal to the south of the appeal site at paragraph 46 I give CS17 full weight and therefore I give the breach of CS17 and DSP40(v) in respect of design, full weight.

The Development is not well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement

- 9.31 I have set out in paragraphs 8.57 to 8.67 why I consider 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. I give this conflict substantial weight in the overall planning balance.

Loss of BMVAL

- 9.32 On the matter of loss of BMVAL⁴, The development will result in the loss of some 10.8ha of Grade 3a 'good quality' BMVAL contrary to DSP40(v). Reflecting the conclusion reached in a number of recent housing appeals in the Borough, it is common ground that the loss of BMVAL would not in itself be sufficient to warrant refusal of planning permission when DSP40 is engaged. Nevertheless, the increased emphasis within the eLP to avoid its loss beyond allocated sites and the larger site area in this appeal result, in my view, of it clearly being a harm to which moderate weight must be attributed to it in the overall planning balance.

Conclusions on Policy DSP40 and the Planning Balance

- 9.33 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, and significant harm to the integrity of the strategic gap. They would result in the loss of BMAL and do not constitute high quality design. I have therefore concluded that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy, which in turn undermines the plan led system and is a factor to which the greatest weight should be attributed. I consider overall that these matters

⁴ Best and Most Versatile Agricultural Land as defined by the Framework: Land in Grades 1, 2 and 3a of the Agricultural Land Classification.

weigh very heavily against the proposals and I have given each conflict with DSP40 substantial weight except for BMLAV which I have given moderate weight and the lack of high quality design substantial weight.

- 9.34 In the appeal case the proposals would provide a mix of housing types and styles. They would make meaningful contribution towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
- 9.35 For these reasons I have found that the proposals would conflict with DSP40, undermining the Council's Spatial Strategy.
- 9.36 Undertaking this approach, I consider, on balance, that the identified harm would significantly and demonstrably outweigh the benefits arising from the development. The scheme would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework.
- 9.37 I therefore conclude that the Appeal should be dismissed.