

Land East of Newgate Lane East, Fareham

Planning Proof of Evidence

On behalf of Miller Homes Ltd and Bargate Homes Ltd.

Date: August 2022 | Pegasus Ref: P20-3154

Appeal Ref: APP/A1720/W/22/3299739 | LPA Ref: P/22/O165/OA

Author: Jeremy Gardiner BA(Hons) BPI DipCons(AA) MRTPI





Contents

1. Personal Background	1
2. Introduction.....	2
3. Scope of Evidence.....	3
4. Reasons for Refusal and Main Issues	4
5. The Site and Surrounds.....	8
6. Planning History and Context.....	10
7. The Proposed Development	21
8. Local Plan Policy and Guidance.....	25
9. Planning Assessment.....	39
10. Planning Balance	64
11. Conditions, CIL and Planning Obligations.....	71
12. Summary and Conclusions	72



1. Personal Background

- 1.1. My name is Jeremy Gardiner. I am employed as Senior Director and Head of the Solent office at Pegasus Group. I hold a BA (Hons) in Town and Country Planning, and a Bachelor of Planning, undergraduate degrees from the University of Manchester, and a Post Graduate Diploma in Building Conservation from the Architectural Association School, London. I have been a Chartered Member of the Royal Town Planning Institute since 1987. I have worked in the town planning profession for 37 years – the first 5 years of which were in local government for Winchester City Council and then Hampshire County Council. Since then, I have worked largely in private practice.
- 1.2. Between 1989 and 1994 I was employed by Dreweatt Neate Chartered Surveyors in Newbury as a Planning Consultant. I then joined Turleys in Winchester where I worked until 1997, during which time I was promoted from Associate to Associate Director. In 1997 I moved to Capitec (part of NHS Estates) where I was employed as Head of Planning, advising on both operational healthcare development and disposals of surplus NHS land. I then joined the Hampshire consultancy, Hawthorne Kamm, in 2002. Hawthorne Kamm was acquired by WYG in 2004, and I remained with WYG for 16 years, my final post being Head of the Southampton Planning team.
- 1.3. In July, 2020, I joined Pegasus Group to open its 15th office, the Solent office, in Chandlers Ford, Eastleigh. Over the last 2 years I have overseen the growth of the Solent team to 13 staff, including a Planning team of 7 and an Urban Design team of 5.
- 1.4. I am familiar with the site having provided advice to Miller Homes and Bargate Homes since 2020. I was the Planning Director overseeing the appeal by Bargate Homes following the Council's non-determination of the Bargate Homes outline application for up to 99 dwellings on the land immediately south of this appeal site (both sites being parts of the former Policy HA2 draft allocation for up to 475 dwellings) which was allowed in July, 2021. I have visited the site and am familiar with the wider area.
- 1.5. The evidence which I present in this Proof of Evidence is given in accordance with the guidance of my professional institution, and I confirm that the opinions expressed are my true and professional opinions.



2. Introduction

- 2.1. This Planning Proof of Evidence has been prepared to support an appeal against the failure of Fareham Borough Council (FBC) to determine planning application P/22/0165/OA within the prescribed time period.
- 2.2. The outline planning application was submitted on 28th January 2022 and proposed the construction of up to 375 residential dwellings with access from Newgate Lane East. The application was confirmed as valid from 31st January 2022 and had an initial determination deadline of 2nd May 2022.
- 2.3. The site forms the central and northern parts of the former Policy HA2 'Newgate Lane South' site which was previously proposed to be allocated for about 475 dwellings in the Regulation 18 version of the Draft Fareham Local Plan.
- 2.4. In July 2021, outline planning permission was granted at appeal for up to 99 dwellings on the southern part of the former HA2 draft allocation, immediately adjacent to the appeal site. This represents a very significant material change in circumstances which must now be taken into account in determining this appeal. In June 2022, a reserved matters application for 96 dwellings on that site was submitted to FBC, with a statutory determination date of 29th August 2022.

3. Scope of Evidence

3.1. The structure of my evidence is as follows:

- Section 4 sets out the reasons for refusal presented by FBC and agreed main issues;
- Sections 5–7 describe the appeal site and surroundings, planning history and context and sets out the proposed development;
- Section 8 establishes the relevant planning policy and guidance as well as material considerations;
- Sections 9 and 10 present my assessment of the proposals and the planning balance; and finally
- Sections 11 and 12 set out the position in respect of conditions, CIL and planning obligations before providing a summary and offering key conclusions.

3.2. As my evidence is concerned with matters of planning policy, it touches on all the reasons for refusal cited by FBC but with a particular emphasis on those policies concerning the principle of residential development, the application of the presumption in favour of sustainable development and how the various considerations are to be weighed in the 'planning balance'. Detailed evidence on the other matters is provided by the following specialists:

- Mr Neil Tiley, Pegasus Group – Housing Land Supply;
- Mr James Atkin, Pegasus Group – Landscape and Visual Impact;
- Mr Tim Wall, i-Transport – Transport;
- Mr David West, Tetra Tech – Ecology; and
- Ms Heather Knowler, EFM – Education.

4. Reasons for Refusal and Main Issues

Reasons for Refusal

- 4.1. The Appellants submitted an appeal against non-determination on 25th May 2022. The application was subsequently heard at FBC's Planning Committee on 24th June 2022.
- 4.2. The Committee Report (**CDC.1**) did not assess the application against Policy DSP40 on the basis of the Council's position at that time that they considered that they were able to demonstrate a five year housing land supply, based upon their Five Year Housing Land Supply Position Statement, May 2022 (**CDH.10**) which purported a supply of 5.08 years. The subsequent Update Report (**CDC.2**) accepted that the Council was no longer able to demonstrate a five year supply, as a result of the Local Plan Inspector's Post Hearing Letter (**CDF.8**). The Inspector requested that the Council move first completions at Welborne back by one year in the trajectory, which had the effect of reducing the housing land supply position to 4.95 years. As a result, the Update Report went on to assess the proposals against Policy DSP40. As confirmed in the Planning Committee Minutes (**CDC.3**) members voted in favour of the planning officer's recommendation to refuse for the reasons set out below.

"The development would be contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17, CS18, CS20 and CS22 of the Adopted Fareham Borough Core Strategy 2011, Policies DSP6, DSP13, DSP14, DSP15 and DSP40 of the Adopted Local Plan Part 2: Development Sites and Policies 2015, and paragraphs 110 and 111 of the National Planning Policy Framework 2021 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."

In reaching this decision, the Council alleged that the appeal proposals breached criteria (ii), (iii) and (v) of Policy DSP40 in whole or part.

4.3. In response to the above 14 putative Reasons for Refusal, the Appellants and FBC have worked together in the preparation of Statements of Common Ground and S106 Unilateral Undertakings in seeking to reduce the number of matters of disagreement between the main parties ahead of the Inquiry.

4.4. The Appellants have also worked with the County Highway Authority to agree detailed highways design amendments, off site highway works, sustainable transport measures, the provision of a Travel Plan and related financial contributions as described in the Agreed Statement on Transport Matters, and in the Main Unilateral Undertaking, in response to reasons i) and m). The Appellants and the Council have agreed that reasons i) and m) have been addressed.

- 4.5. The Appellants have entered into a Nitrates Agreement with a mitigation provider and the Council to agree to purchase nitrogen credits from an approved nitrate mitigation scheme and have agreed to a Grampian condition to prevent occupation of the dwellings until such credits are purchased. This addresses reason d), as agreed in the Ecology and Planning Statements of Common Ground.
- 4.6. The Council and Appellants have agreed that mitigation for recreational disturbance can be provided through a suitable financial contribution to the Solent Recreation Mitigation Strategy (as per Policy DSP15 of the Local Plan) and the Council's Interim Mitigation Strategy for recreational impacts on the New Forest. This addresses reason e) as agreed in the Ecology and Planning Statements of Common Ground.
- 4.7. Additional information to demonstrate that adequate mitigation for the loss of the Secondary Support Area and Low Use Area that form part of the Solent Waders and Brent Goose network has been provided, and this is agreed by the Council. This addresses reason f), as agreed in the Ecology and Planning Statements of Common Ground.
- 4.8. The Appellants have also submitted additional protected species survey information which is acceptable to the Council. This addresses reason g), as agreed in the Ecology and Planning Statements of Common Ground. The Main Unilateral Undertaking also provides obligations relating to the SuDS Strategy as required by reason j), the on-site provision of affordable housing as required by reason k), and the provision of open space and facilities as required by reason l). Reasons j), k) and l) are addressed.
- 4.9. Reason n) requires a financial contribution towards education provision. The Appellants have no objection to making such a contribution. A contribution amount has been agreed with the County Local Education Authority, as set out in the Main Unilateral Undertaking, but there is an evidential disagreement between the Appellants and the LEA because the Appellants believe that the contribution sought is not CIL Regulations compliant. For this reason, this is included in the Main Unilateral Undertaking as a "blue pencil clause" for the Inspector's consideration. This addresses reason n).
- 4.10. FBC's 5 Year Housing Land Supply position has recently become the subject of monthly Position Statements prepared for Planning Committees. At the Cartwright Drive appeal hearing on 16 August, 2022, the Council conceded that it must remove 57 dwellings from its supply, leaving a 51 dwelling shortfall and reducing its supply position to 4.9 years. I expect the Council to concede that it cannot demonstrate a 5 year supply for the purposes of this appeal but that is to be confirmed.

Main Issues

- 4.11. A Case Management Conference (CMC) was conducted by the Inspector on 27th July 2022 where it was agreed between the parties that the main issues in this appeal are likely to be as follows (as set out in the Inspector's CMC Summary Note):
1. 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
 2. The impact of the proposed development on:
 - a. the character and appearance of the open countryside of the area.

- b. the integrity of habitat sites and their network, and protected species.
- c. highway safety and the operation of the highway network.

4.12. Since the CMC, and as noted above, progress has been made on ecology and highways matters and it is now agreed between the main parties that, subject to completion of the Unilateral Undertakings and the imposition of suitably word conditions, there are no unacceptable impacts arising from the proposed development on:

- b. the integrity of habitat sites and their network, and protected species.
- c. highway safety and the operation of the highway network.

4.13. The CMC Summary Note confirms that 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.

4.14. Therefore, the remaining main issues in this appeal appear to be:

1. 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;
2. The impact of the proposed development on the character and appearance of the open countryside of the area;
3. The weight to be attributed to the development plan in the light of the Council's five year housing land supply position, to be weighed in the planning balance.

5. The Site and Surrounds

- 5.1. The appeal site lies to the south of Fareham, west of Bridgemary / Woodcot and east of Newgate Lane East (B2285), as shown on the Site Location Plan below. The fields immediately to the south benefit from outline planning permission for up to 99 residential dwellings and a Reserved Matters application for 96 dwellings has been submitted to FBC for determination at the time of writing, further details of which are provided in Section 6 below.

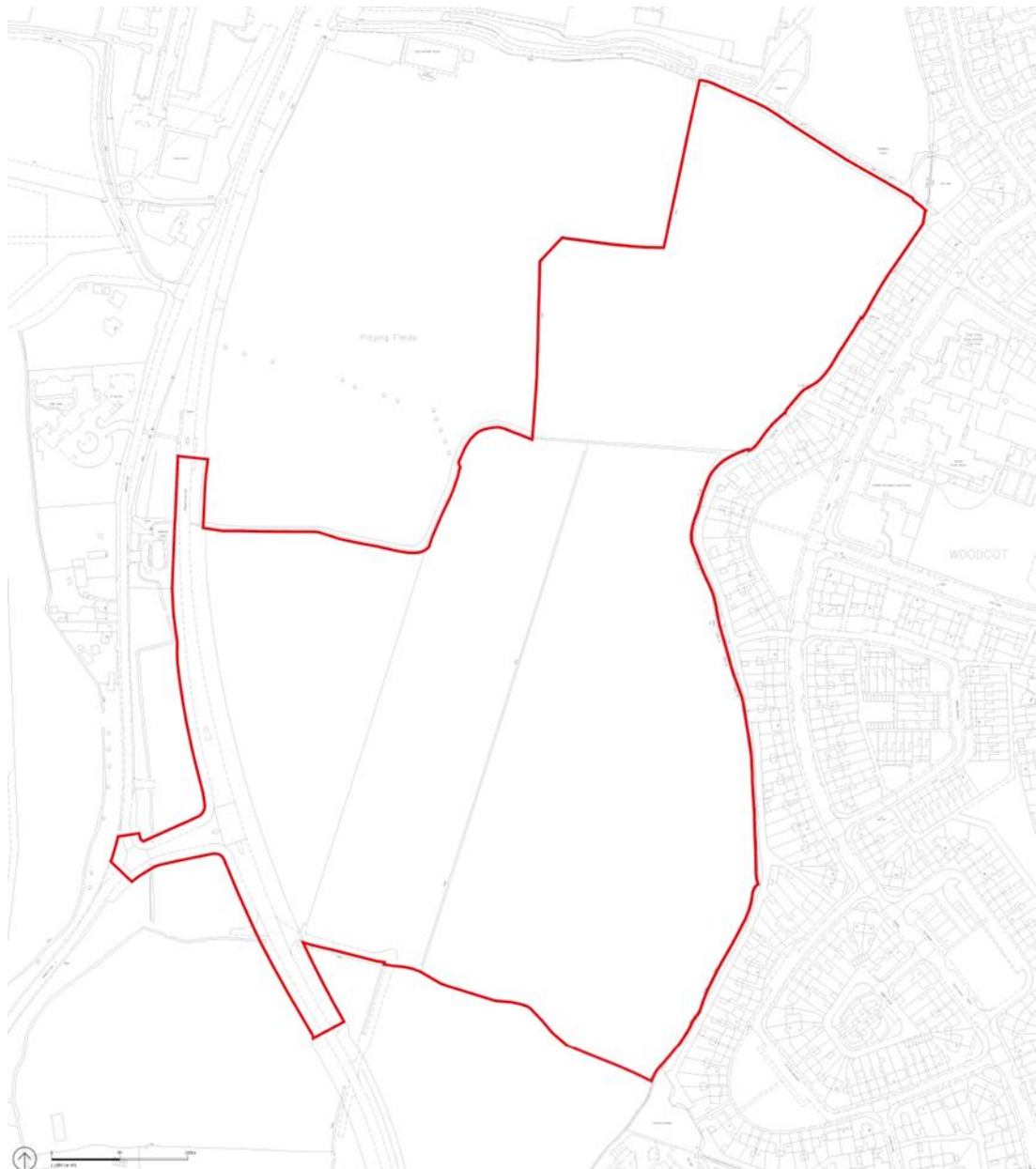


Figure 1 – Site Location Plan

- 5.2. The site measures 20.04 hectares and comprises of four field parcels defined by mature hedgerows and trees, and includes a section of Newgate Lane East and Newgate Lane to

facilitate the proposed vehicular access. A detailed description of the site and its surroundings is contained within the Design and Access Statement (**CDA.7a and b**).

- 5.3. The site is located adjacent to but outside the defined settlement boundary identified in the Local Plan Part 2: 'Development Sites & Policies' (adopted 2015) policies map (**CDE.2a**), in a 'strategic gap' known as the Stubbington / Lee on Solent to Fareham / Gosport Gap. Gosport Borough and the urban area of Bridgemary / Woodcot lie immediately to the east.
- 5.4. The northern part of the site is covered by an area identified as a 'Secondary support area' for Solent Waders and Brent Geese whilst part of the central and southern portions of the site are identified as 'low use' in this regard. There are no other known statutory or non-statutory landscape or ecological designations on the site.
- 5.5. The site's location in relation to local services, facilities and public transport is set out in detail within the Transport Assessment (**CDA.19a, b and c**) that accompanies the application, and is considered further in the Planning Assessment section of this Proof of Evidence.

6. Planning History and Context

HA2 Allocation

- 6.1. The appeal site forms the central and northern portions of land that was proposed to be allocated for about 475 dwellings in the Fareham Draft Local Plan 2036 (Regulation 18, published in December 2017, **CDF.1**) under allocation HA2 'Newgate Lane South'. The plan proposed that the strategic gap boundary be moved to the western boundary of the allocation, with land to the west, comprising the Peel Common waste water treatment works and Newlands solar farm, remaining in the strategic gap. In doing so the Council considered that the site formed a suitable location for sustainable development.
- 6.2. The proposed HA2 allocation spans the land from Tukes Avenue Play Space / Collingwood Playing Fields in the north to Brookers Lane to the south, with the existing urban edge of Bridgemary / Woodcot forming the eastern boundary and the relief road (Newgate Lane East) forming the western boundary (as shown on the extract from the Regulation 18 Local Plan below).

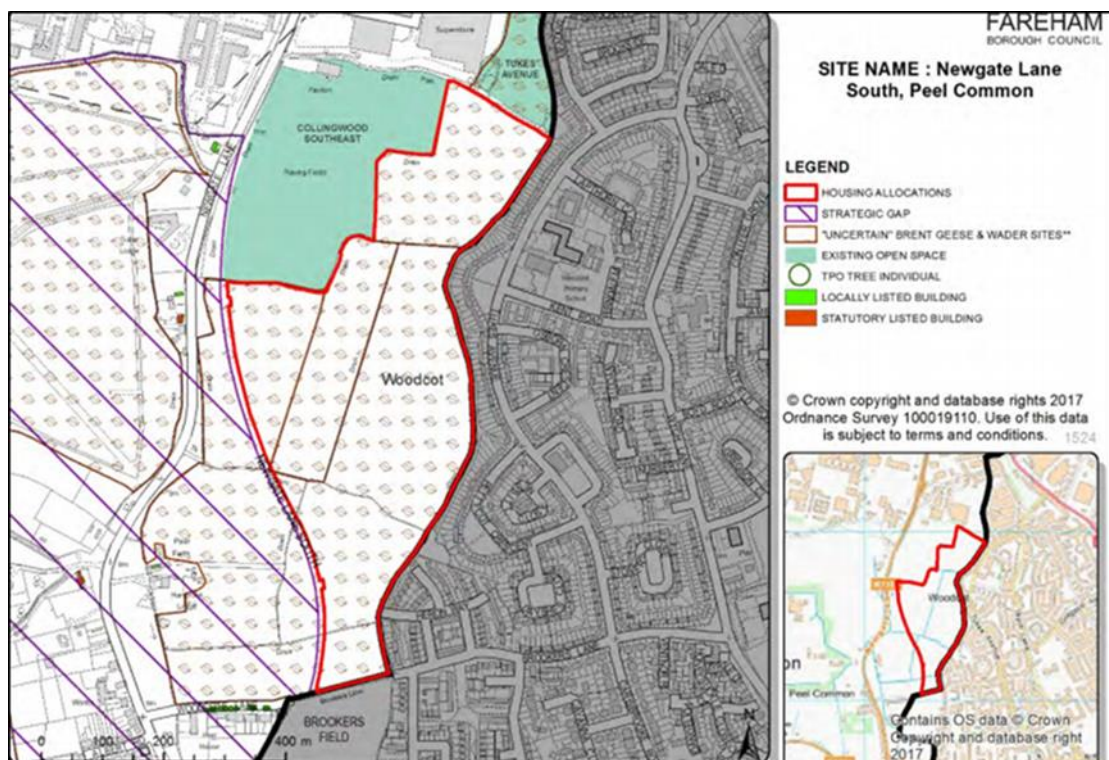


Figure 2 – Extract from Draft Fareham Local Plan 2036 showing HA2 allocation

- 6.3. The HA2 allocation sets out a number of site specific requirements for how FBC envisaged the site would be developed. These include: primary site access from Newgate Lane East; the retention of the existing network of field hedgerows, networks and ditches as part of a green network and pedestrian routes through the site; and a green corridor along the western edge of the site to provide an open landscape setting for Newgate Lane East, within the context of its location in a strategic gap, and to help maintain connections to the SINC to the south of Rowner Road and for potential ecological mitigation.

- 6.4. The 'Sustainability Appraisal and Strategic Environmental Assessment for the Fareham Local Plan 2036, October 2017' (the SA/SEA, **CDG.11**) which supported the Regulation 18 Local Plan details the packages of residential development options considered (Table 4.3) and confirms that the Preferred Option was Option 2F which included 'Newgate Lane South' (the HA2 allocation). The SA/SEA 2017 states the following in respect of the current appeal site which is made up of SHLAA site references 3028 'Copp's Field, East of Newgate Lane, Fareham' and 3057 'Land East of Newgate Lane, Fareham' *"Selected – accessible edge of urban area site with low landscape sensitivity – forms part of wider development site."*
- 6.5. One of the supporting evidence documents to the Regulation 18 Local Plan was the Background Paper: Housing Site Selection (October 2017) (**CDG.13**). At Section 2, this paper set out some of the "Key Evidence" used to inform site selection, including the SHLAA (2017), the Sustainability Appraisal, landscape evidence and information on constraints. In relation to landscape evidence, it is stated (page 3):
- 6.6. *"This evidence together with the sites promoted suggests there are sufficient deliverable and developable sites to meet the Council's housing requirements without needing to consider sites in the most sensitive landscapes or those that will detrimentally impact the integrity of the gap..."*
- 6.7. At Section 5 of the Housing Site Selection paper, "Individual broad site summaries" are provided for both preferred sites to be proposed for allocation in the draft Plan (5A sites) and for sites which are considered developable but are not proposed to be included in the proposed development strategy (5B sites). "Newgate Lane South" (allocation policy HA2) was included as a preferred site. The "Overview" narrative on the site stated:
- 6.8. *"Overall this site has a good sustainability appraisal outcome when taken on balance and considering mitigating opportunities. Accessibility to services and schools will principally be into the adjacent urban area (Gosport Borough Council). Although the site is in the current Strategic Gap the evidence has suggested that its development would not harm the integrity of the gap (the gap area can be refined to accommodate this development site). The new Newgate Lane bypass will provide a logical and defensible urban edge into the future. The site also has the potential to deliver new homes in the short/medium term."*
- 6.9. As highlighted in Pegasus Group's Local Plan representations (para's 2.33 – 2.44, **CDH.20**), later iterations of the SA/SEA (September 2020, **CDG.10**) set out that the Council continued with a development strategy based on Option 2F, although it removed the allocations at Newgate Lane South (HA2) and Romsey Avenue, Portchester, and did not allocate the Strategic Growth Areas at Fareham South or the western portion of Downend, Portchester. HA2 was no longer selected as an allocation with the rationale for rejecting sites 3028 and 3057 being *"Development would have a detrimental impact on the Strategic Gap. Site is designated as a Brent Geese and Solent Waders Low Use site and no evidence of a strategy compliant solution."*
- 6.10. Our representations set out why the rationale for discounting the site based upon impact on the strategic gap is now superseded and discredited by the Inspector's conclusion at Paragraph 31 of the Newgate Lane East (Brookers Lane) appeal decision (**CDJ.1**), and discussed further in the Planning Assessment Section of this Proof of Evidence. They also highlight that the Appellants can provide suitable mitigation in regard to impacts on Brent Geese and Solent Waders habitats, as confirmed in the Ecology Statement of Common Ground and Mr West's Proof of Evidence.

- 6.11. This assessment of the component parcels of site HA2 in the Council's SA/SEA in the 2017 and 2020/21 versions is therefore inconsistent, although the assessment methodology does not appear to have changed.
- 6.12. The site specific requirements for HA2 in the Regulation 18 Local Plan were supplemented by a Development Framework which provides further detail on the indicative layout and access points, as illustrated on the Council's plan below:

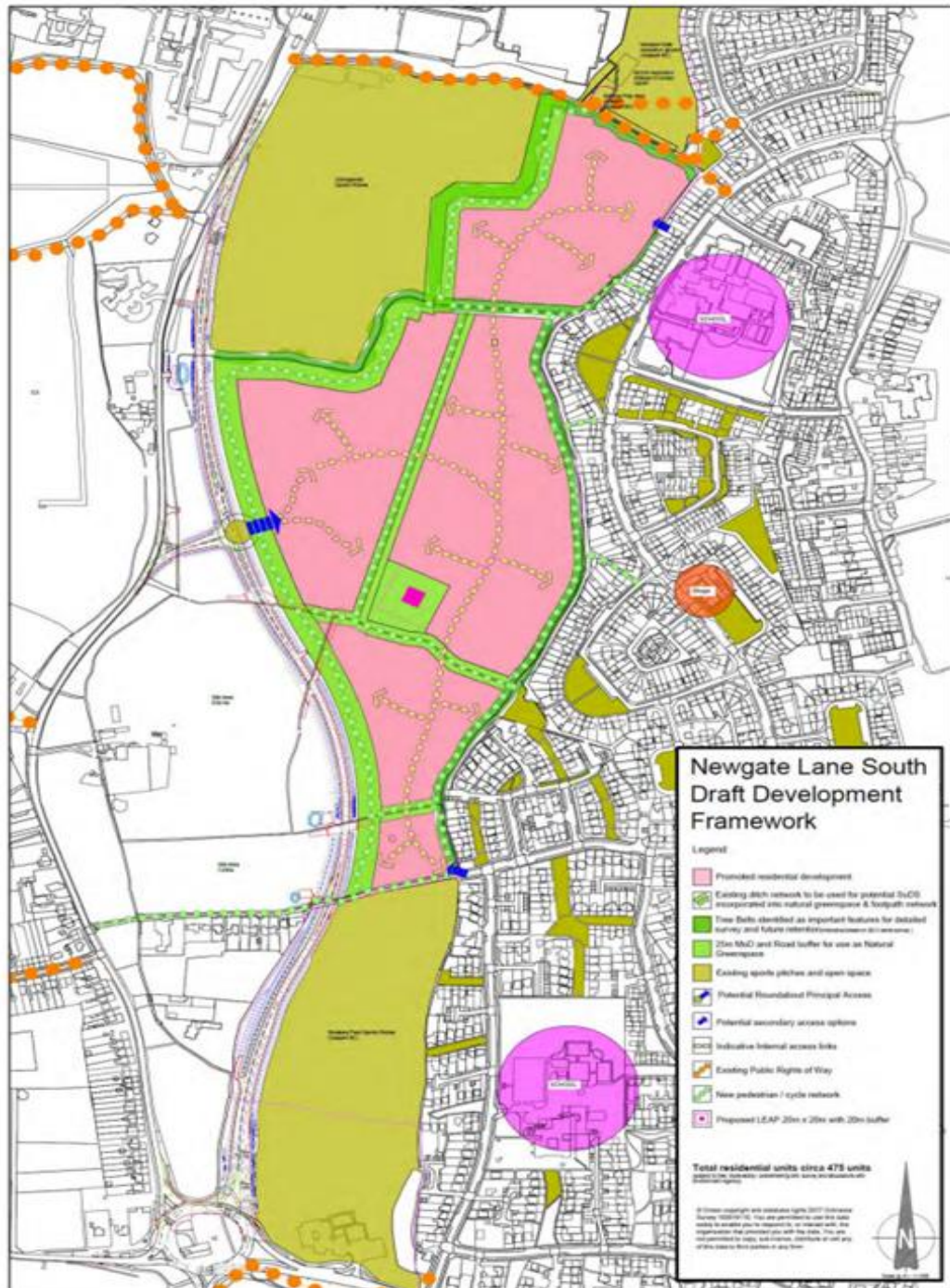


Figure 3 - Extract from Draft Fareham Local Plan 2036 showing HA2 Development Framework

- 6.13. Following the HA2 allocation in the Regulation 18 Local Plan, it was agreed that Miller Homes and Bargate Homes would remain in regular contact with FBC about progress in bringing the allocation forward for development. This included the preparation of a Development Framework Document (DFD) (**CDH.18**). The purpose of the document is set out in page 4 of the DFD:

“The purpose of this Development Framework Document (DFD) is to expand upon the key principles set out in Site Allocation HA2 through a more refined analysis of the site opportunities and constraints, informed by technical and environmental reports and also to demonstrate how the site can be delivered as part of a joined-up approach between landowners, developers, Fareham Borough Council and other key stakeholders. The DFD will form part of the evidence base for the new Fareham Local Plan and will help inform future versions of the Local Plan. It will also help guide future planning applications across the site allocation, so that individual applications can be delivered in accordance with the comprehensive development framework masterplan for the site.”

- 6.14. Dialogue with FBC continued and included a meeting with the Council’s Principal Planner, Senior Planner, Urban Design Officer and Transport Planner on 13th July 2018 to discuss the draft DFD. At the meeting, it was agreed that the DFD should be developed further with the next stage being the production of the conceptual masterplan. This was subsequently submitted to FBC and was positively received by officers and further discussions were had over 2018 – 2020 about the submission of a planning application for residential development at the allocation following the principles set out in the DFD.
- 6.15. Bargate Homes subsequently submitted an outline planning application for up to 99 dwellings on the southern portion of the HA2 allocation in November 2019. Positive discussions continued with officers who indicated that they had intended to take the application to FBC’s Planning Committee on 24th June 2020 with a recommendation for approval, subject to the positive completion of their Appropriate Assessment, and draft S106 Heads of Terms were discussed accordingly. However, officers later changed this position, and it became clear that they would no longer be supporting the application given the withdrawal of the HA2 allocation from the emerging Local Plan shortly afterwards. Bargate Homes subsequently appealed against non-determination and, as set out in Section 6 below, the appeal was allowed on 28th July 2021.
- 6.16. Figure 4 below shows the site of the approved Brookers Lane scheme and the current appeal site as part of the HA2 proposed allocation.

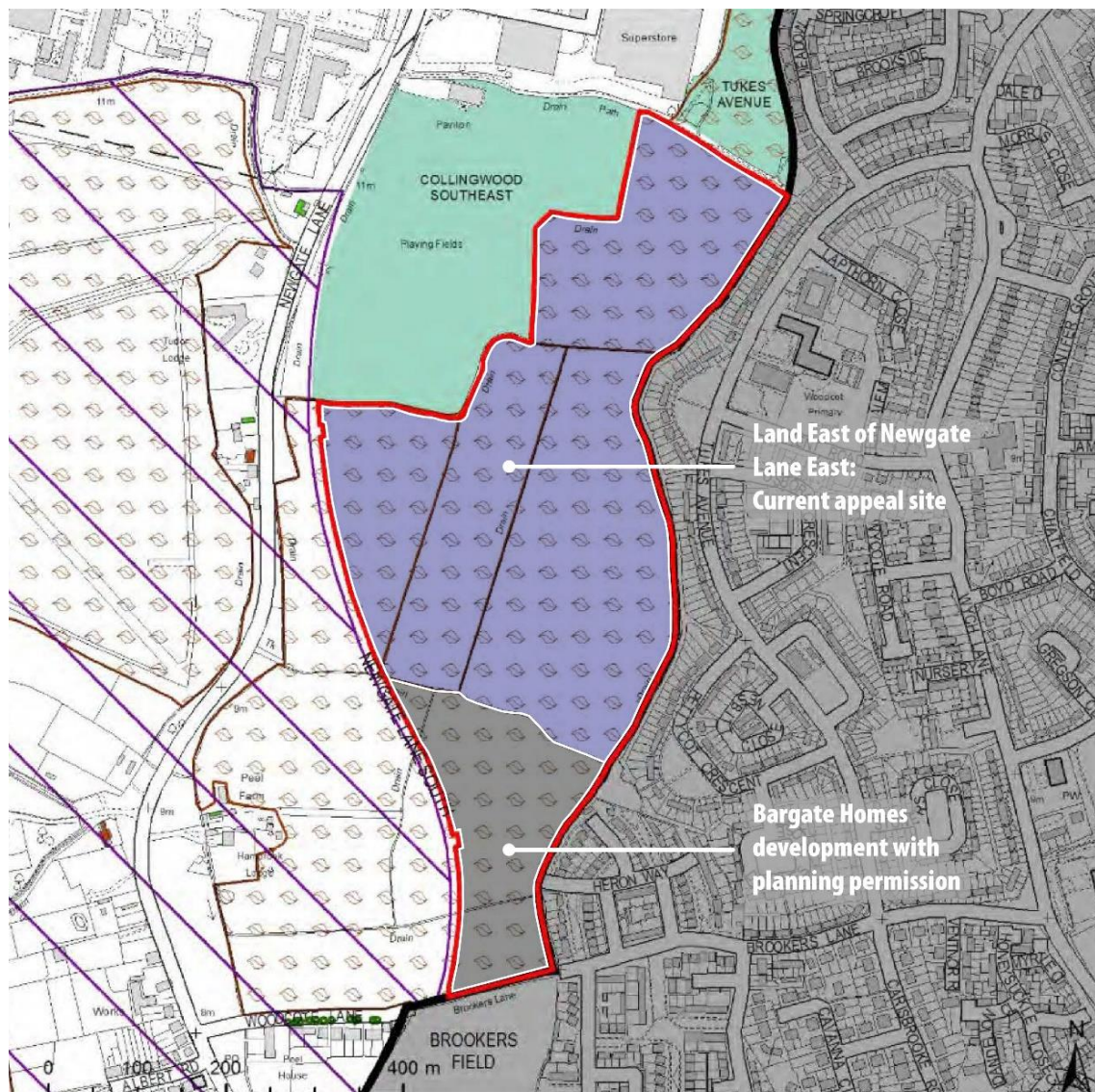


Figure 4 – Approved Brookers Lane site and current appeal site as part of HA2 proposed allocation

- 6.17. HA2 was eventually deleted as a proposed allocation in the Regulation 19 Publication Local Plan (**CDF.4**) in November 2020, having been an allocation in various iterations of the Plan for over three years. The removal of the allocation was on the basis of the Council’s flawed decision to plan for a reduced housing requirement based upon the assumed implementation of the Government’s draft Standard Method at that time. Despite this position, the latest version of the Local Plan, published in June 2021 (Regulation 19, Revised Publication Local Plan, **CDF.5**) continues to omit the HA2 allocation, stating “Development would have a detrimental impact on the Strategic Gap” as the reasoned justification for the removal of the allocation within the SA / SEA Report (**CDG.8**) which supports the plan.
- 6.18. As set out in detail in Section 8 below, Pegasus Group has submitted representations to the Council and attended the Examination hearing sessions strongly objecting to the Council’s approach to housing delivery and advocating the reinstatement of the HA2 housing allocation. On 6th June 2022, the Local Plan Inspector, Ms Hockenull, published her Post Hearings Letter (**CDF.8**) in which she identified that she had “significant concerns” around the soundness of the draft Plan and legal compliance and recommended a further “focused

consultation” on housing need and supply matters. The 3 week “focussed consultation” took place ending on 25th July, 2022, and sought further representations from invited interested parties (including the appellants) on the Council’s Affordable Housing Background Paper, revised Housing Supply Topic Paper and Windfall Analysis Update. This consultation has now taken place and representations are being considered by the Council and the Local Plan Inspector. It is for the Inspector to “consider the way forward and advise the Council accordingly” (as she stated in her Post Hearings Letter). The timescale for this is unclear.

- 6.19. In her Post Hearing Letter, Ms Hockenull found the completions for Welborne in 2023/24 set out in FBC’s housing trajectory (240 dwellings) to be “overly ambitious” (para. 27) and that they should be pushed back a year. This had the immediate effect of reducing the Council’s five year housing land supply to below five years, as confirmed in the Council’s Update Report to Committee (15th June 2022, **CDC.2**) where a 4.95hls was identified (although the Appellants consider the figure to be much lower, as set out in Mr Tiley’s Proof of Evidence).
- 6.20. Ms Hockenull also found that two draft housing allocations, FTC3 ‘Fareham Station East’ (120 dwellings) and FTC4 ‘Fareham Station West’ (94 dwellings), should be removed from the Council’s anticipated housing supply due to uncertainty as to whether the sites are developable. The Council will therefore need to consider replacing these two draft allocations with another site or sites to replace the 214 dwellings previously to be delivered by sites FTC3 and FTC4.
- 6.21. In the Appellants’ view, there remain unresolved objections to the emerging Plan and its evidence base. The emerging Plan is therefore now less advanced than it was a number of months ago and can be afforded only limited weight.

Draft Local Plan Allocations within the Strategic Gap

- 6.22. The Revised Publication Local Plan proposes two significant residential housing allocations within the Stubbington / Lee on Solent to Fareham / Gosport Strategic Gap:
- Allocation HA55 ‘Land South of Longfield Avenue’ proposes 1,250 dwellings on the southern edge of Fareham, and north of Stubbington. There is a current undetermined outline planning application at the site for up to 1,200 dwellings (ref. P/20/0646/OA).
 - Allocation HA54 ‘Land east of Crofton Cemetery and west of Peak Lane’ proposes 180 dwellings on the northern edge of Stubbington, and south of Fareham. An appeal for 206 dwellings at the site was allowed on 10th January 2022 (Appeal Ref: APP/A1720/W/21/3275237, **CDJ.2**).
- 6.23. The implications of these allocations / permission are considered in the ‘Strategic Gap’ section of the Planning Assessment at Section 9 of this Proof of Evidence, which includes a Strategic Gap Plan showing the site locations.

Environmental Impact Assessment Screening

- 6.24. A request for a Screening Opinion under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) relating to the

proposed residential development of up to 420 dwellings at land east of Newgate Lane was submitted to FBC on 7th October 2021 (ref. P/21/1656/EA).

- 6.25. On the 11th November 2021, FBC opined that, for the purposes of the Regulations, the proposed development is not likely to have a significant effect on the environment and does not constitute EIA development. An Environmental Statement is not therefore required.
- 6.26. Other than this, there is no known planning history relating to the main portion of the site, east of Newgate Lane East. However, there have been planning applications relating to the construction of the Newgate Lane East 'relief road', part of which lies within the western portion of the site, as well as planning applications and appeals on sites to the south and south-west of the appeal site, as set out further below.

Newgate Lane East Relief Road

- 6.27. On the 20th November 2015, Hampshire County Council granted planning permission for the "Construction of a new southern section of Newgate Lane to provide a new connection from Newgate Lane to Peel Common Roundabout together with the construction of a junction and link road to access the existing route of Newgate Lane" ref. P/15/0717/CC.
- 6.28. The Newgate Lane relief road (known as Newgate Lane East), lies directly to the west of the main body of the appeal site, and was opened in April 2018. The planning application for the relief road included footway/cycleway enhancements at Brookers Lane to the south of the site, which have also now been implemented, as well as improvements to the Peel Common Roundabout to the south and junctions to the north at Longfield Avenue, HMS Collingwood and Speedfields Park.

Recent Appeal Decisions and Reserved Matters Applications at Newgate Lane East

Land East of Newgate Lane East (Brookers Lane)

[Appeal ref: APP/J1725/W/20/3265860 & APP/A1720/W/21/3269030 – decision 28th July 2021](#)

- 6.29. These co-joined appeals relate to Bargate Homes' proposals for the development of up to 99 dwellings on Land East of Newgate Lane East (immediately south of the current appeal site and north of Brookers Lane).
- 6.30. The Concept Masterplan (**CDH.28**) for the proposed development is reproduced below. The Strategic Gap Plan at Section 9 shows the previous appeal site in the context of the strategic gap and other recently allowed appeal sites and draft Local Plan allocations in the wider area.



Figure 5 - Approved Bargate Homes development at Brookers Lane

- 6.31. Given that the appeal site straddled the boundary between Fareham and Gosport Boroughs (with part of the access lying within Gosport), duplicate planning applications were submitted to both authorities. The Gosport application was refused planning permission on the basis of the Council's opposition to the principle of development and an appeal was subsequently lodged. The Fareham application was appealed against non-determination and both appeals were heard at a co-joined hearing on 22nd June 2021.
- 6.32. In the appeal decision letter dated 28 July 2021, the Inspector, Mr. G. D. Jones, allowed both appeals (CDJ.1). This represents a very significant change in circumstances.

Reserved Matters Application - P/22/O841/RM

- 6.33. This application is for 'Reserved matters approval (appearance, landscaping, layout and scale) for the development of 96 units together with public open space and associated infrastructure (following outline permission reference P/19/1260/OA)' and was validated on 4th July 2022, with a statutory determination date of 29th August 2022.

6.34. The submitted Site Layout Plan (CDH.19) for the reserved matters application is reproduced below.



Figure 6 – Reserved Matters Site Layout Plan - Brookers Lane

Land West of Newgate Lane East

Appeal ref: APP/A1720/W/20/3252180 and 3252185) – decision 8th June 2021

6.35. These co-joined appeals relate to proposals for the combined development of up to 190 dwellings on Land West of Newgate Lane East (south-west of the appeal site and north of Woodcote Lane).

- 6.36. Whilst those appeals were dismissed, the Inspector makes pertinent comments on the acceptability of development east of Newgate Lane East in his decision letter dated 8 June 2021 (**CDJ.7**).
- 6.37. The implications of the above appeal decisions are considered further as part of the planning assessment section of this Proof of Evidence.

Pre-Application Consultation

- 6.38. As set out above, the site has previously been promoted throughout the emerging local plan process including through the submission of representations to the 'Regulation 19' consultation on the Draft Local Plan which took place from June to July 2021 and more recently at the Examination Hearing sessions which took place in March / April 2022 and in response to the "focused consultation" on Housing Supply Matters which took place in July 2022.
- 6.39. The Appellants entered into pre-application discussions with the Council and a request for pre-application advice was submitted on 8th October 2021, with a meeting held on 24th November 2021. The pre-application Concept Masterplan proposed up to 420 dwellings on the site, including residential development on the westernmost field (Figure 8 on page 48 below, **CDH.17**).
- 6.40. Key matters discussed included:
1. The principle of development and impact upon the landscape / strategic gap;
 2. Five year housing land supply;
 3. Site layout and potential for development to be pulled eastwards to retain an element of open farmland character next to Newgate Lane East.
 4. Site access;
 5. Open space provision;
 6. Habitat Regulation Assessment (HRA) matters; and
 7. Scope of technical and environmental reports to support the application.
- 6.41. Consultation responses were received from the Council's Affordable Housing and Environmental Health Officers as well as from Hampshire County Council Ecology, Archaeology and Education only.
- 6.42. A pre-application meeting was also held with Hampshire County Council Highways on 12th November 2021 to agree the scope of the Transport Assessment. This followed the submission of a formal Transport Assessment Scoping Note and discussions with Hampshire County Council continued until the application was submitted.
- 6.43. Community consultation has been undertaken with leaflets sent to c. 280 local residents, Councillors and key stakeholders notifying them of the proposals and inviting them to a virtual public consultation in November 2021. Full details are contained within the Statement of Community Involvement.



- 6.44. All three channels of consultation have provided consultees with the opportunity to provide comments which have been used to inform the proposals.

7. The Proposed Development

- 7.1. The proposed development has been carefully designed with consideration of the local landscape context as well as through engagement with FBC and HCC Highways pre-application services and following public consultation. The Concept Masterplan is a product of the constraints and opportunities established through the design process, as well as the design principles that underpin FBC's Development Framework for HA2 as set out in the Regulation 18 Draft Local Plan (2017) (**CDF.1**), and further refined through the Development Framework Document produced in consultation with officers at FBC (see Section 6 above). Full details of the design approach are set out in the Design and Access Statement and Landscape and Visual Impact Assessment.
- 7.2. The proposed development is for:
- '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.'*
- 7.3. The illustrative Concept Masterplan is reproduced below:



Figure 7 – Concept Masterplan

7.4. The key features of the proposals are:

1. Up to **375 market and affordable dwellings** across a range of housing types, tenures and sizes (to be determined at the reserved matters stage);

2. Vehicular access via a **new roundabout** on Newgate Lane East (as shown on drawing ITB10353-GA-102E (**CDA.26**)) as well as pedestrian and cycle connections to Newgate Lane East (west), to Tukes Avenue (east), to the consented development to the south and north to the Public Rights of Way network fronting the site;
3. A **strong landscape framework** incorporating:
 - i. A range of linked, multi-functional open spaces and green corridors that provide leisure options, safe pedestrian environments throughout the site, ecological benefits, as well as an attractive setting for a high-quality residential development.
 - ii. Omission of development from the western field parcel to provide a robust and substantial buffer to soften the edge to the strategic gap and countryside to the west. This area will include a bird mitigation area, sensitively designed drainage features and ecological enhancements and retains reference to the scale and openness of the agricultural context. The area also contributes to the wider strategic green infrastructure network which passes broadly through this part of the site.
 - iii. Key central north to south green corridor with retained hedgerow and linear open space. The retained hedgerow would be supplemented by additional tree planting and become the boundary to a north/south linear green space, acting as a distinct break in the massing of the development and adding a green corridor into the overall scheme. This linear corridor is wide enough to provide a multi-functional space offering recreational, ecological and drainage benefits as well as providing a direct link between the northern portion of the site and the green corridor proposed as part of the approved development to the south. This joined up approach offers a continuous green corridor through the wider site linking to existing public open space to the north and south.
 - iv. A large central green and Neighbourhood Equipped Area for Play (NEAP) acting as focal point which together with pocket parks/green spaces will provide a diverse network of access and opportunities for recreation.
 - v. Corner "cushions" of woodland planting at the western edge of the site acting as mini buffers at the corner of each field, to provide additional set back and more opportunities for planting at greater depths and provide additional screening to views from Newgate Lane East.
 - vi. Welcome spaces at key connections / points of entry into the site, where residential development is pulled back to create pocket parks / spaces which merge with the hierarchy of green routes, providing an attractive interface.
 - vii. The retention and enhancement of existing field boundary trees, hedgerows and ditches within proposed open spaces.
 - viii. Attractive sustainable drainage features within proposed open spaces.
- 7.5. The proposed development will deliver 40% affordable housing (150 dwellings), compliant with local plan policy, to be secured through a S106 Agreement.

- 7.6. The mix of market housing will be determined at the reserved matters stage. Housing will be no more than two storey in height, as confirmed on page 31 of the Design and Access Statement (**CDA.7a and b**).
- 7.7. The layout and design of the dwellings together with the associated infrastructure (including estate roads, car parking, incidental landscaping, and drainage and utilities services) will be determined at the reserved matters stage. However, the environmental principles and landscape led approach that have been adopted are enshrined in the layout and will provide a strong framework of green infrastructure to the proposed development, giving the scheme a strong sense of place.
- 7.8. As described by Mr Tim Wall's evidence on highways / transport matters, following the submission of this appeal and as part of i-Transport's Highways Response (TA Addendum) to Hampshire County Council (the highway authority), alterations were requested and have been made to two elements affecting access to the site. Those alterations, which are described in detail in Mr Wall's Proof of Evidence, relate to the design of the Newgate Lane Roundabout (the primary access to the site) and to the pedestrian / cycle / emergency access from Tukes Avenue. In both cases, the changes are minor. On 23 August, 2022, I wrote to PINS to ask whether those changes need to be the subject of any further consultation in order for them to be accepted as part of the appeal proposals. PINS wrote to the Council on 7 September, 2022, seeking the Council's views. The Council responded on 12 September, 2022, agreeing that the minor technical changes would not prejudice any party involved with the Inquiry, and it is the Local Authority's opinion that a consultation on these changes would not be required.

8. Local Plan Policy and Guidance

- 8.1. The following sections summarise the national and local planning policy and guidance pertinent to the appeal site and development proposals.
- 8.2. The plan-led approach to development, as set out by Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires development proposals to accord with the adopted Development Plan unless material considerations indicate otherwise. The relevant adopted Fareham Development Plan policies are therefore set out below, before going on to consider material considerations including the emerging Local Plan and the National Planning Policy Framework.

The Development Plan

- 8.3. The adopted Development Plan for Fareham Borough consists of three main documents (in addition to the Hampshire Minerals and Waste Plan, adopted in October 2013):
- Local Plan Part 1: 'Core Strategy' (Adopted in August 2011);
 - Local Plan Part 2: 'Development Sites & Policies' (DSP) (Adopted in June 2015); and
 - Local Plan Part 3: The 'Welborne Plan' (Adopted in June 2015).
- 8.4. The Core Strategy contains the strategic policies and the DSP contains the development management policies. The Welborne Plan deals specifically with the development of the new garden village.
- 8.5. The Local Plan strategy is out-of-date because it is predicated on an out-of-date assessment of housing needs, in line with paragraph 63 of the Supreme Court judgement in Hopkins Homes/Suffolk Coastal (**CDK.1**). I note from Mr. Neil Tiley's evidence that he expects the Council's record of substantial under-delivery of housing, assessed through the Housing Delivery Test, to continue until at least late 2023 / early 2024. In addition, Mr Tiley calculates that the Council is only able to demonstrate a 3.85 year housing land supply, that a shortfall has persisted since December, 2017; and that a shortfall will persist until at least 2032 unless policies of the adopted Development Plan are reviewed. It is therefore clear that the Council has failed to support the Government's objective of significantly boosting the supply of homes, that it continues to do so now, and will do so in the immediate future. Policies of the Development Plan should be read in this context.
- 8.6. The following section sets out the Core Strategy and DSP policies relevant to the proposals. Policies CS2, CS6, CS14, CS22, DSP6 and DSP40 are the 'most important' policies for determining the application. However, as set out further in paragraphs 5.58 to 5.65 below and as consistently confirmed by Inspectors in numerous recent appeal decisions, these policies are out-of-date in terms of paragraph 11(d) of the NPPF and any conflict with these policies should be afforded reduced weight.

Core Strategy

- 8.7. **Policy CS2 'Housing Provision'** establishes the housing land supply sources to meet the OAN of 3,729 between 2006 and 2026 (excluding Welborne), which includes allocated sites and brownfield land. The supply of sites will be kept up to date through a regular review of

the Strategic Housing Land Availability Assessment (SHLAA) and allocated through Part 2 of the Plan.

- 8.8. The proposals conflict with policy CS2 in that the appeal site lies outside the defined urban area and does not form an allocation for housing. However, policy CS2 is out-of-date and should be afforded reduced weight.
- 8.9. **Policy CS4 'Green Infrastructure, Biodiversity and Geological Conservation'** affords protection to important habitats within the Borough including Sites of Special Scientific Interest, Sites of Importance for Nature Conservation, areas of woodland, and the coast and trees will be protected in accordance with the hierarchy of nature conservation designations. In order to prevent adverse effects upon sensitive European sites in and around the Borough, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development.
- 8.10. The proposals do not conflict with Policy CS4.
- 8.11. **Policy CS5 'Transport Strategy and Infrastructure'** promotes the achievement of sustainable integrated transport systems for the Borough including the safeguarding of land for identified works; development will not be permitted where this is prejudicial to the implementation of these schemes. The Council will permit development which contributes to necessary infrastructure, does not adversely affect the safety and operation of the local network and is designed and implemented to prioritise and encourage sustainable travel. Development proposals which generate a high demand for travel should be located in accessible areas.
- 8.12. The proposals do not conflict with Policy CS5.
- 8.13. **Policy CS6 'The Development Strategy'** provides that development will be focused in the following locations:
- Fareham;
 - Fareham Town Centre;
 - Western Wards and Whiteley;
 - Portchester;
 - Stubbington & Hill Head and Titchfield;
 - Welborne; and
 - The Strategic Development Allocations at Coldeast Hospital and Daedalus Airfield.
- 8.14. It states:
- "In identifying land for development, the priority will be for the reuse of previously developed land, within the defined urban settlement boundaries including their review through the Site Allocations and Development Management DPD, taking into consideration biodiversity / potential community value, the character, accessibility, infrastructure and*

services of the settlement and impacts on both the historic and natural environment. Opportunities will be taken to achieve environmental enhancement where possible. 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.."

8.15. The proposals conflict with policy CS6 in that the appeal site lies outside the defined urban area and does not form an allocation for housing. However, policy CS6 is out-of-date and should be afforded reduced weight.

8.16. **Policy CS14 'Development on land 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 agriculture, 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."

8.17. The proposals conflict with policy CS14 in that the appeal site lies outside the defined urban area and does not form an acceptable form of development listed in the policy. However, policy CS6 is out-of-date and should be afforded reduced weight.

8.18. **Policy CS15 'Sustainable Development and Climate Change'** provides that the Council will seek to secure development in locations which are sustainable and where there will be a minimum negative environmental impact. Development should:

- make efficient use of land;
- seek to properly manage flood risk and waste impacts; and
- meet Code for Sustainable Homes Level 6.

8.19. The proposals do not conflict with Policy CS15.

8.20. **Policy CS16 'Natural Resources and Renewable Energy'** requires developers to demonstrate best practice in respect of energy and water efficiency, reduction of carbon emissions and implementation of the waste hierarchy to protect natural resources. Loss of best and most versatile agricultural land should be resisted. Development (of more than 1 dwelling or more than 500 sqm of non-residential floorspace) will be encouraged to contribute to the Fareham target of 12MW of renewable energy by 2020.

8.21. The proposals result in limited conflict with Policy CS16 in that they will result in the loss of a relatively small amount of Best and Most Versatile Agricultural Land. However, Policy CS16 pre-dates the NPPF and is more onerous in its restrictive nature. Numerous Appeal Inspectors have afforded any such conflict with Policy CS16 as having only very limited weight, such as Inspector Jordan at paragraph 59 of her decision at Crofton Cemetery (CDJ.2).

- 8.22. **Policy CS17 ‘High Quality Design’** sets out a series of design criteria for new development including the requirement to respond positively to the surrounding environment in terms of scale, form and character, and to promote permeability, legibility, open space and a distinct identity of place. In addition, new housing will be required to: secure adequate internal and external space, dwelling mix, privacy, and sunlight and daylight to meet the requirements of future occupiers.
- 8.23. The proposals do not conflict with Policy CS17.
- 8.24. **Policy CS18 ‘Provision of Affordable Housing’** provides that on sites of 15 or more dwellings, developers will be expected to provide 40% affordable units unless a lack of viability can be clearly demonstrated.
- 8.25. The proposals do not conflict with Policy CS18.
- 8.26. **Policy CS20 ‘Infrastructure and Development Contributions’** requires development to provide or contribute towards infrastructure and any necessary mitigation measures through conditions, legal agreement and/or CIL.
- 8.27. The proposals do not conflict with Policy CS20.
- 8.28. **Policy CS21 ‘Protection and Provision of Open Space’** safeguards the network of open and green spaces for recreation and wildlife value. New development must provide open space in accordance with the Council’s standards.
- 8.29. The proposals do not conflict with Policy CS21.
- 8.30. **Policy CS22 ‘Development in Strategic Gaps’** provides that land within strategic gaps will be treated as countryside, and proposals will not be permitted either individually or cumulatively where they significantly affect the integrity of the gap. Strategic gaps have been identified between Fareham / Stubbington and Western Wards / Whiteley (the Meon gap); and Stubbington / Lee on Solent and Fareham / Gosport.
- 8.31. This policy is concerned with maintaining the settlement pattern and the local landscape character rather than inferring any landscape value per se:
- “Strategic gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. Continuing pressure for high levels of development mean that maintaining gaps continues to be justified.” (para. 6.52)*
- 8.32. The policy wording states that boundaries of strategic gaps will be reviewed in accordance with the following criteria:
- “a) The open nature/sense of separation between settlements cannot be retained by other policy designations;*
- b) The land to be included within the gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence;*

c) In defining the extent of a gap, no more land than is necessary to prevent the coalescence of settlements should be included having regard to maintaining their physical and visual separation."

- 8.33. This commitment to review the boundaries of the strategic gaps was added following the comments in the Inspector's Examination Report on the Core Strategy 2011 (**CDE.3**), which highlighted the need to provide robust justification to meet legal and statutory requirements. At para. 47 the Inspector writes:

"Concern has been raised by a number of representors that policy CS22's protection of strategic gaps lacks adequate justification – particularly in view of the restrictive approach to development outside settlements set out in policy CS14. Nevertheless, given the built-up nature of much of Fareham Borough and noting that some of the Borough's constituent settlements are separated by relatively narrow open gaps, I accept the Council's argument that the broad identification of strategic gaps in the Core Strategy can play a useful role in guiding its intended review of settlement boundaries. Furthermore, and with reference to the Government's localism agenda, it is clear that there is strong local support for preventing coalescence between identified settlements. In principle therefore, the policy is adequately justified – although the detailed boundaries of the gaps themselves remain to be reviewed in the SADM DPD. The Council accepts that policy CS22 could provide clearer guidance for that review, and suggests that criteria be added in line with the PUSH Policy Framework for Gaps13 [6.8]. I endorse this change for soundness reasons."

- 8.34. Para. 6.53 of the policy's supporting text goes on to provide that a review of the detailed gap boundaries will be undertaken as part of the DSP to identify the land essential to perform this role and that which cannot be protected by other designations.

- 8.35. This exercise was reported in the FBC's 'Review of Gap Policy Designations' document, published in October 2012 (**CDG.1**). The report considers the role of the gaps in respect of three assessment criteria, namely physical and visual separation, settlement character and landscape sensitivity, and green infrastructure value, and, for Fareham–Stubbington, concludes that it continues to provide a function which cannot be fulfilled by other policies. For this reason, the Fareham to Stubbington gap remains unchanged in the DSP.

- 8.36. Although the proposals lie within the Stubbington / Lee on Solent and Fareham / Gosport Strategic Gap, they will not significantly affect the integrity of the gap – either individually or cumulatively – and for this reason they do not conflict with Policy CS22. In any event, Policy CS22 is out of date because its boundaries are predicated on an out-of-date understanding of the Borough's development needs; and also by virtue of it being one of the "most important" policies and is therefore caught by Footnote 8 by virtue of a failure by the Council to demonstrate a five year housing land supply and its agreed failure to meet the Housing Delivery Test. Moreover, the Council has itself previously identified the appeal site as part of a draft housing allocation (see Section 6 above) and the balance of that draft housing allocation has been granted planning permission, also on the basis that it will not harm the integrity of the gap, individually or cumulatively.

Development Sites and Policies (DSP)

- 8.37. **Policy DSP1 'Sustainable Development'** reflects the presumption in favour of sustainable development as set out in the NPPF. The Council 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.

8.38. The proposals do not conflict with Policy DSP1.

8.39. **Policy DSP2 'Environmental Impact'** states that development proposals should not, individually or cumulatively, have a significant adverse impact on neighbouring development or the wider environment in terms of noise, air or other pollutants. Proposals should have a satisfactory arrangement for the management of waste and protection of water resources.

8.40. The proposals do not conflict with Policy DSP2.

8.41. **Policy DSP3 'Impact on Living Conditions'** states that development proposals should ensure that there will be no unacceptable adverse impact upon living conditions on the site or neighbouring development, by way of the loss of sunlight, daylight, outlook and/or privacy.

8.42. The proposals do not conflict with Policy DSP3.

8.43. **Policy DSP4 'Prejudice to Adjacent Land'** states:

"Where piecemeal development could delay or prevent the comprehensive development of a larger site, a legal agreement will be sought, to ensure that any permitted development does not prejudice the development of adjacent land and that highway access, pedestrian access and services to adjoining land are provided."

8.44. The proposals do not conflict with Policy DSP3.

8.45. **Policy DSP5 'Protecting and Enhancing the Historic Environment'** seeks to protect heritage assets including sites of archaeological importance, taking account of their significance.

8.46. The proposals do not conflict with Policy DSP5.

8.47. **Policy DSP6 'New Residential Development Outside of the Defined Urban Boundaries'** reinforces the Core Strategy's objective to restrict development outside existing settlements, unless specific circumstances apply. It states:

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

8.48. The proposals conflict with policy DSP6 in that the appeal site lies outside the defined urban boundary and does not form an acceptable form of development listed in the policy. However, policy DSP6 is out-of-date and should be afforded reduced weight.

8.49. **Policy DSP13 'Nature Conservation'** provides that development is permitted where designated sites and protected/priority species are protected, and where appropriate enhanced. Proposals resulting in detrimental impacts to these sites or species shall only be granted where impacts are outweighed by the needs for/benefits of the development; and adverse impacts can be appropriately mitigated or compensated.

- 8.50. Mr West, on whose evidence I rely, concludes that the proposals do not conflict with Policy DSP13, and this is confirmed by the Ecology SoCG.
- 8.51. **Policy DSP14 ‘Supporting Sites for Brent Geese and Waders’** states that proposals on ‘important’ sites for brent geese and/or waders may be granted permission where it can be demonstrated there is no adverse impact on those sites or appropriate avoidance and/or mitigation measures can be secured.
- 8.52. Mr West, on whose evidence I rely, concludes that the proposals do not conflict with Policy DSP14, and this is confirmed by the Ecology SoCG.
- 8.53. **Policy DSP15 ‘Recreational Disturbance on the Solent Special Protection Areas (SPA)’** states that proposals resulting in ‘in combination’ effects of recreation on the Special Protection Areas can be satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. Applications resulting in a ‘direct effect’ may be subject to appropriate assessment.
- 8.54. Mr West, on whose evidence I rely, concludes that the proposals do not conflict with Policy DSP15, and this is confirmed by the Ecology SoCG.
- 8.55. **Policy DSP40 ‘Housing Allocations’** sets out the allocated sites for housing on the policies map. In addition, 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.”*
- 8.56. Policy DSP40 is triggered when the Council cannot demonstrate a five year housing land supply, allowing exceptions to otherwise restrictive policies. The Council alleged (in its Update Report to Planning Committee on 15 June, 2022) that the appeal proposal breached criteria ii (in part), criteria iii, and criteria v (in part) of DSP40. In respect of criterion (ii), the Council agrees that the proposal is sustainably located but does not agree that the proposal is well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement.

- 8.57. In respect of Policy DSP40 criterion v. the Update Report alleged environmental harm due to impacts on Habitat sites, impact on ecology and protected species, and loss of agricultural land. As described, impacts on Habitat sites and protected species have been addressed and mitigated, leaving only the loss of an area of BMVAL as a harm arising from the proposals. However, as confirmed by appeal Inspectors, this loss is not unacceptable and would not on its own amount to a reason for refusing consent.
- 8.58. I set out at Section 9 below, with reference to the evidence of Mr West, Mr Atkin and Mr Wall, on which I rely, that the proposals do not conflict with Policy DSP40.

Weight to be given to the Development Plan Policies

- 8.59. Not all of the FBC policies cited above should be given full weight in the consideration of the proposals, as confirmed by Inspectors in numerous recent appeal decisions including at Brookers Lane (**CDJ.1**), Land west of Newgate Lane East (**CDJ.7**), Crofton Cemetery (**CDJ.2**), Downend Road (**CDJ.3**), Posbrook Lane (**CDJ.4**), Funtley Road (**CDJ.6**) and Eversdown Farm (**CDJ.9**).
- 8.60. Whilst the purposes of policies CS2, CS6, CS14 and DSP6 are recognized to be 'broadly' consistent with the NPPF, the settlement boundaries upon which their spatial application is predicated are acknowledged as out-of-date. This is due not only to the housing land supply / Housing Delivery Test situation but is derived from the fact that the settlement boundaries were based on a now out-of-date assessment of housing need. Accordingly, in line with the Supreme Court judgement in Hopkins Homes / Suffolk Coastal (**CDK.1**), the decision maker is entitled to accord these policies reduced weight.
- 8.61. This has been confirmed in multiple recent appeal decisions, including most recently by Inspector Rose in his decision letter of 25th February 2022 for Land east of Posbrook Lane, Titchfield (Appeal Ref. APP/A1720/W/20/3254389 –**CDJ.4**) where he stated at para. 107:
- "The housing requirement underlying Policies CS6, CS14 and DSP6 as set out in Policy CS2 pre-dates the Framework and is agreed to be out-of-date. The restrictive settlement boundaries derived from that housing requirement and identified in those policies are thereby also out-of-date and, accordingly, the weight to be attached to any conflict with them is reduced."*
- 8.62. Similarly, Inspector Jordan in her decision letter of 10th January 2022 for Land East of Crofton Cemetery, Stubbington (Appeal Ref: APP/A1720/W/21/3275237 – **CDJ.2**) concluded at para. 9:
- "The CS predates the Framework and so is not based on an up-to date Framework compliant assessment of housing needs. The housing requirement has not been reviewed within the last 5 years. Policy CS2 and CS6 cannot therefore be considered to be up to date. In addition, policies CS14 and DSP6 are derived from settlement boundaries which are based on an out of date housing requirement and this reduces the weight I can attribute to them."*
- 8.63. Therefore these policies, which control development outside the defined settlement boundaries, do not represent up-to-date policies and they carry reduced weight.

8.64. The same principle applies to the boundaries of the strategic gap policy, CS22. These were drawn in the context of a given assessment of development needs which is no longer accurate. This is recognized in the emerging Local Plan, in which the Council has proposed significant development within the strategic gap, including the appeal site and adjoining land at Regulation 18 stage and thereafter until 2020.

8.65. Appeal Inspectors have recently considered this issue. In his decision letter dated 28th July 2021 for the appeal to the south at Brookers Lane (**CDJ.1**), Inspector Jones stated at para's 15 and 16:

"The criteria of DSP40 offer flexibility and are not as restrictive as the requirements of those other policies, including CS14, CS22 and DSP6. As another Inspector recently concluded when considering two other nearby appeals (the Peel Common Inspector), it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies [LP1 Policies CS14 and CS22 and LP2 Policy DSP6] would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

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

8.66. Policies DSP40 and CS22 are the operative development plan policies, although they are subject to paragraph 11(d) of the NPPF as set out below.

Material Considerations

The following are material considerations that are relevant in consideration of the appeal proposals:

Emerging Local Plan

8.67. FBC is currently preparing a new Local Plan. The emerging FBC Local Plan has comprised the following iterations:

- Draft Local Plan (Regulation 18), published December 2017 (**CDF.1**);
- Issues and Options, published July 2019 (**CDF.2**);
- Supplement to the draft Local Plan, published January 2020 (**CDF.3**);
- Draft Local Plan (Regulation 19), published October 2020 (**CDF.4**); and
- Revised Draft Local Plan (Regulation 19), published June 2021 (**CDF.5**).

8.68. The Local Plan Examination hearing sessions took place in March / April 2022.

- 8.69. As set out above, Pegasus Group and others have submitted representations (July 2021, **CDH.20**) objecting to the Council's approach to housing delivery which fails to meet the area's housing needs, including its affordable housing needs, and the unmet need of neighbouring authorities, rendering the Plan unsound. The representations highlighted the inconsistent approach to assessment of the HA2 site in the SA/SEA at different stages of the Local Plan preparation process (see para's 6.4 to 6.7 above), and strongly advocate the reinstatement of the HA2 housing allocation to meet housing needs.
- 8.70. Pegasus Group attended the Local Plan Examination hearing sessions in March / April 2022 to re-iterate this position (Hearing Statements, **CDH.21 to 26**). During the course of the hearing sessions the Local Plan Inspector, Ms Helen Hockenhull, raised several areas of concern including around housing need and supply.
- 8.71. On 6th June 2022, the Local Plan Inspector, Ms Hockenhull, published her Post Hearings Letter (**CDF.8**) in which she identified that she had "significant concerns" around the soundness of the draft Plan and legal compliance. She set out that:
1. modifications would be required in order for the Plan to be found sound (in addition to the modifications discussed at the hearing sessions) including amongst other things a commitment to an early review;
 2. additional work was required including:
 - I. an update to the HRA,
 - II. potentially a paper revisiting the proposed Areas of Special Landscape Quality,
 - III. updates to the Affordable Housing Background Paper, the Housing Supply Topic Paper and the Windfall Analysis Update which were published after the hearing sessions and had not therefore been subject to consultations or representations;
 3. the updated Affordable Housing Background Paper, the Housing Supply Topic Paper and the Windfall Analysis Update would need to be subject to a focused consultation prior to the Inspector being able to advise further on this matter.
- 8.72. The focused consultation took place between 5th July 2022 and 25th July 2022. Pegasus Group submitted representations highlighting serious shortcomings in the Topic Paper evidence, including:
1. The Council has not calculated the affordable housing need arising from newly formed households or from existing households falling into need in accordance with PPG, with the consequence that it has vastly underestimated the overall level of affordable housing need across the Plan period.
 2. The stepped housing requirement is unjustified. Even if it is deemed to be sound in principle, the short-term requirement should be increased to enable the maximum number of households to access the much needed housing, including affordable housing, as possible.
 3. There continue to be anomalies in the Council's assessment of the contribution of sites to the overall delivery and the 5-year supply.

4. There is no clear evidence of an assessment of Category B sites as required by the NPPF.
 5. The Windfall allowance includes a projected continuing supply of major windfall sites which is not evidenced or justified.
- 8.73. Our representations conclude that the Council's updated evidence base is wholly lacking in a number of regards, and this will need to be addressed in order for the Local Plan Review to be justified. Furthermore, the evidence that is available suggests that the Plan should identify additional sites to address the evident housing land supply shortfalls.
- 8.74. Mr Tiley's Proof of Evidence sets out at paragraphs 7.22 – 7.30 that as a minimum it therefore remains necessary for the Inspector to consider the representations submitted to the focussed consultation, which may necessitate additional hearing sessions, and that there remains a significant amount of work to be undertaken with continued uncertainty as to whether the Plan will be found sound given the significant concerns raised by the Inspector and extent of unresolved objections.
- 8.75. I agree with Mr Tiley that the Plan is therefore now less advanced than it was a number of months ago and can be afforded only limited weight, in accordance with para. 48 of the NPPF.

National Planning Policy Framework

- 8.76. The Housing White Paper 'Fixing our Broken Housing Market', published in February 2017, sets out the Government's plan for tackling the housing crisis by planning for "*the right homes in the right places*". It placed great emphasis on the need to plan for and deliver homes much more quickly and identified issues around the robustness of the current '5-year housing land supply' mechanism, due to inconsistencies in both the OAN and supply methodologies.
- 8.77. In response to the White Paper, the National Planning Policy Framework (NPPF) was revised in July 2018 and in February 2019.
- 8.78. More recently, the NPPF was revised again in July 2021, with an increased focus on design quality, with the aim of creating 'beautiful' and 'sustainable' places not only for sites individually but for places as a whole.

Section 2: The Presumption in Favour of Sustainable Development

- 8.79. The NPPF is clear that the purpose of the planning system is to contribute to sustainable development. Sustainable development is summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs, and should achieve net gains for economic, social and environmental objectives.
- 8.80. The application of the 'presumption in favour of sustainable development' is explained in para. 11. For decision-taking this means:

"c) approving development proposals that accord with an up-to-date development plan without delay ["the straight balance"]; 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, 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 proposed; 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 ["the tilted balance"]." [my annotations.]

- 8.81. The circumstances in which policies are deemed 'out of date' is confirmed in footnote 8, which include (but are not limited to), for applications involving the provision of housing, where an LPA cannot demonstrate a five-year supply of deliverable housing sites 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. (my emphasis added).
- 8.82. Having regard to FBC's housing land supply position and Housing Delivery Test result, Mr Tiley's evidence demonstrates that on both counts, the presumption is triggered. FBC has agreed in recent Statements of Common Ground for nearby appeals that it cannot demonstrate a five-year supply of housing land, as well as within their January 2022 Five Year Housing Land Supply Position Statement (**CDH.9**). FBC's Position Statement (July 2022, **CDH.11**) asserts that the Council can demonstrate a 5.01yr supply (a 6 dwelling surplus), but more recently at the Cartwright Drive appeal hearing on 16 August, 2022, the Council reducing its supply position to 4.9 years. As set out in Mr Tiley's Proof of Evidence, his view is that the Council can only demonstrate a 3.85yrs and that there has been a significant and persistent shortfall in housing land supply in the borough.
- 8.83. The circumstances in which policies in the NPPF 'provide clear reason for refusing' a proposed development (such that the presumption does not apply) are confirmed in footnote 7, as follows:
- "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 180) 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 67); and areas at risk of flooding or coastal change."*
- 8.84. Specifically, in respect of impacts on local habitats sites, Paragraph 182 confirms 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."*
- 8.85. The development proposals are not caught by para. 182 because significant effects on habitats sites can be appropriately mitigated, as evidenced in Mr West's Proof of Evidence, and therefore the presumption does apply.

Section 4: Decision-Making

- 8.86. The NPPF is explicit that decision makers should seek to champion sustainable development by working with applicants to find solutions to approve proposals. Paragraph 38 states:

"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible."

- 8.87. Whilst the NPPF is clear that the planning system should be plan-led, paragraphs 48, 49 and 50 explain that the weight to be given to emerging plans should be in accordance with their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with the NPPF.

Section 5: Delivering a Sufficient Supply of Homes

- 8.88. The NPPF continues to be an important vehicle to assist the government's target to deliver 300,000 net additional homes a year. Para. 60 asserts:

"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."

- 8.89. Other sections of the NPPF relevant to the appeal proposals are:

- Chapter 8: Promoting healthy and safe communities;
- Chapter 9: Promoting sustainable transport;
- Chapter 11: Making effective use of land;
- Chapter 12: Achieving well designed places;
- Chapter 14: Meeting the challenge of climate change, flooding and coastal change;
- Chapter 15: Conserving and enhancing the natural environment; and
- Chapter 16: Conserving and enhancing the historic environment.

Habitats Regulations Assessment (HRA)

- 8.90. The Local Planning Authority is required to carry out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 as amended (the 'Habitats Regulations') known as a Habitats Regulations Assessment (HRA), to test if a plan or project proposal could significantly harm the designated features of a European site.

- 8.91. European sites include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).
- 8.92. The HRA comprises several distinct stages. The first stage of the HRA process includes formally screening a proposed plan or project to decide whether it is likely to have a significant effect on a European designated site. If, at the screening stage, any significant effects of a plan or project on a SPA or SAC (alone or in combination with other plans or projects) can be excluded, then the plan or project can be “screened out” and no further assessment is required. However, where any significant effect of a plan or project on a SPA or SAC (alone or in combination with other plans or projects) cannot be excluded, then the competent authority will be required to assess the effects in more detail through an Appropriate Assessment, to ascertain whether an adverse effect on the integrity of any SPA or SAC can be ruled out.
- 8.93. In this case, a HRA is required to assess the impacts of the residential development within Fareham Borough upon European Sites and it will be the appeal Inspector’s responsibility, as Competent Authority, to undertake a HRA in that regard, in consultation with Natural England. To assist this process a 'shadow' HRA has been prepared by Tetra Tech and is considered further in Section 9 below.

Other Considerations

- 8.94. Other material considerations of relevance to the development as a whole are:
- FBC Supplementary Planning Guidance, including:
 - Affordable Housing SPD, December 2005 (**CDE.6**);
 - Design Guidance SPD, December 2015 (**CDE.7**); and
 - Planning Obligations SPD, April 2016 (**CDE.8**).
 - The Gosport Borough Local Plan 2011-2029 (**CDE.12**);
 - Solent Recreation Mitigation Definitive Strategy (approved by FBC Executive in March 2018, **CDE.10**) and the Bird Aware Strategy (2017, **CDE.10**) and developer contributions as of 1st April 2022 as updated on the Bird Aware Solent webpage (**CDE.11**);
 - Natural England Nutrient Neutrality Guidance, March 2022 (**CDH.2**);
 - Solent Brent Goose and Wader Strategy, 2020 (**CDE.9**);
 - Executive Briefing Paper 'Implications of Natural England advice on New Forest Recreational Disturbance', 7th December 2021 (**CDH.15**);
 - Executive Briefing Paper 'Fareham Borough Solent Waders and Brent Geese Mitigation Solution' 7th December 2021 (**CDH.16**);
 - Fareham Landscape Assessment (2017, **CDG.20**); and
 - Technical Review of Areas of Special Landscape Quality and Strategic Gaps (September 2020, **CDG.6**).

9. Planning Assessment

- 9.1. The following section provides a thematic assessment of the proposal against the key policy and material considerations.

a) Principle of Development

- 9.2. The starting point for assessing the principle of the proposed development is consistency with the development plan. The spatial strategy in the Core Strategy is set out in Policy CS2, which sets out development needs in the plan period; in CS6, which establishes the settlements and allocations to deliver development needs; in CS14 which restricts development outside settlement boundaries and allocations; and in CS22, which establishes the principle of strategic gaps. This strategy is then delivered in the DSP through its allocations, its identification of settlement boundaries and strategic gap boundaries and through DSP6, which is the counterpart of CS14. In addition, DSP40 provides an 'exceptions' policy to release land for development outside settlement boundaries / within the strategic gaps, if the Council cannot demonstrate a 5-year housing land supply, as we assert is the case in Fareham currently and as evidenced in Mr Tiley's Proof.
- 9.3. For the reasons set out below, the appellants consider the proposals to fulfil the criteria in DSP40 in full and, as that policy acts as an exception to the restrictive policies CS14, CS22 and DSP6, the proposals are, consequently, in compliance with the development plan, taken as a whole. As such, paragraph 11(c) of the NPPF is engaged and the proposals should be permitted 'without delay'.
- 9.4. However, if there is deemed to be a breach of any of the criteria of Policy DSP40 (which the appellants do not consider to be the case), this should not prevent planning permission from being granted by reference to the second limb of s. 38(6) of the 2004 Act i.e. that 'determination must be made in accordance with the plan unless material considerations indicate otherwise' (my emphasis added). The key material consideration in this case is that the development plan is not up-to-date. This is because, as set out in Section 8 above, the 'most important policies for determining the application' are not up-to-date because they are predicated on an out-of-date assessment of housing needs, in accordance with the principles established through the Supreme Court judgement in Hopkins Homes/Suffolk Coastal (**CDK.1**). In addition, the Council has failed the Housing Delivery Test and it cannot demonstrate a five year housing land supply. Failure of one of those tests engages the 'presumption in favour of sustainable development' (the tilted balance) set out in paragraph 11(d) by reason of Footnote 8 of the NPPF. In this case, the Council has failed both of them.
- 9.5. The fact that the 'most important' policies are out-of-date also means that the weight to be given to any breach of these out-of-date policies within that assessment of the 'tilted balance' is reduced accordingly.
- 9.6. The site is not located within the Green Belt or AONB or any statutory environmental designation as listed in Footnote 7 of the NPPF, nor does the proposal adversely affect the integrity of local habitats sites having regard to the test in para. 182 of the NPPF, which would otherwise preclude the 'presumption' under NPPF para. 11d) i.

- 9.7. As set out in para. 11d) ii of the NPPF, ‘sustainable development’ means granting permission unless any adverse impacts of doing so would “significantly and demonstrably outweigh the benefits”, when assessed against the NPPF.
- 9.8. The location of the site outside of the defined urban boundary, although contrary to the spatial development strategy, is therefore not prohibitive to its development in planning terms because the ‘titled balance’ applies.
- 9.9. The identified need for housing growth, both at a national and local scale, is a material consideration which must be afforded considerable weight in establishing the residential development of the site as having a significant economic and social benefit.
- 9.10. Section X below demonstrates that the many and manifest benefits of the proposals are not ‘significantly and demonstrably’ outweighed by any harms arising.
- 9.11. The following paragraphs consider the proposals against each of the criteria of policy DSP40. However, before undertaking this analysis, it is important to note the comments from Inspector Jones in his decision letter dated 28th July 2021 for land to the south at Brookers Lane (Appeal Refs: APP/A1720/W/21/3269030 & APP/J1725/W/20/3265860) (**CDJ.1**) in respect of the effectiveness of the policy in helping to address housing land supply shortfall:
- “the evidence suggests that the balance they (criteria (ii) and (iii)) strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the supply shortfall has persisted for a number of years in spite of this Policy”.*
- 9.12. I concur with the Inspector’s view in this regard. To the best of my knowledge, FBC has not been able to successfully demonstrate a five year supply of housing land at appeal since the shortfall was first identified in January 2015 in the Navigator appeal decision (Appeal Ref. APP/A1720/A/14/2220031) (**CDJ.25**). At that time, the Council contended that they were able to demonstrate a 13.1 year supply of deliverable housing land. The Inspector concluded at para. 62:
- “In addition, the Council’s figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years”. (my emphasis).*
- 9.13. There have been very many appeal decisions since then confirming that the housing land supply shortfall has persisted, including the recent decision at Eysersdown Farm, Burr ridge (Appeal Ref. APP/A1720/W/W/3273119 – 6th June 2022) (**CDJ.9**) where it was common ground that there was a 4.32 years supply of homes (para. 28).
- 9.14. Therefore, in the seven years since the Local Plan Part 2: Development Sites and Policies was adopted (June 2015), Policy DSP40 has been wholly ineffective in delivering a sufficient supply of housing, due to its unduly restrictive nature, as identified by Inspector Jones. This contributes to reducing the weight that should be afforded to any conflict with Policy DSP40, in addition to the reduced weight already applied by virtue of it being out-of-date as set out above. My assessment of the appeal proposals against Policy DSP40 below should therefore be read in this context.

- 9.15. FBC’s Statement of Case sets out that the Council’s position is that it does have a five year housing land supply and therefore Policy DSP40 is not engaged. However, at the Cartwright Drive appeal hearing on 16 August, 2022, the Council conceded that 57 dwellings should be removed from its supply, reducing its position to 4.9 years. The Council has undertaken an assessment of the proposals against Policy DSP40 in the event that there is not a five year housing land supply, as we contend is the case. The subsequent Statement of Common Ground between the Appellants and FBC confirms that the parties agree that parts i and iv are satisfied and that compliance with parts ii, iii and v. remains in dispute.
- 9.16. With regards to part ii of policy DSP40, it is agreed that the proposal is sustainably located adjacent to the existing urban settlement boundary. It is only whether the proposal is well related to the existing urban settlement boundary, and whether it can be well integrated with the adjoining settlement, that remain in dispute. In the Update Report to FBC’s Planning Committee dated 15 June, 2022, Officers allege (para. 6.4.12) *“Despite its location, and connectivity to the north and proposed development to the south, the proposed development would remain largely cut off and isolated from the remainder of the built-up area to the east. It is therefore considered that the proposals would not be well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement....”*.
- 9.17. With regards to part iii of Policy DSP40, which requires proposals to be *“sensitively designed to reflect the character of the neighbouring settlement”*, and *“to minimise any adverse impact on the countryside and Strategic Gap,”* in the Update Report to FBC’s Planning Committee dated 15 June, 2022, Officers allege that the proposals will cause significant harm to the landscape character of the area, they will cause the physical and visual coalescence of settlements, and fail to minimise the impact of the development on the countryside and Strategic Gap.
- 9.18. With regards to part v of policy DSP40, it is agreed that the proposal is unlikely to have any unacceptable amenity implications. The Council has withdrawn RfR i). Therefore, it is only whether the proposal would have any unacceptable environmental implications that is in dispute. Given that agreement has been reached regarding the mitigation of all ecological impacts of the development, potential environmental implications are limited to the loss of Best and Most Versatile agricultural land.
- 9.19. The Appellant’s position is that the proposal complies with all of the parts of policy DSP40, as set out below.

i) The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall

- 9.20. Recent appeal decisions, including those for land immediately to the south of this site at Brookers Lane, have demonstrated that the housing land supply position is significantly less than five years. Mr Tiley’s Proof of Evidence demonstrates that the Council is currently able to demonstrate a 3.85 year housing land supply with a substantial shortfall of 776 homes. The proposal for up to 375 dwellings would assist in reducing the shortfall without over-delivering against local needs. It is similar in scale to other schemes which were deemed to comply with this criterion of DSP40, such as the application allowed at appeal for 350 dwellings at Land to the east of Downend Road, Portchester (appeal decision at **CDJ.3**).

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

- 9.21. It is helpful to look at the components of this criterion in isolation.
- 9.22. First, the site represents a sustainable location. There is good access to a range of everyday facilities by foot or by bicycle via proposed connections at the site boundaries linking to existing footways and cycleways, including to the south through the approved Bargate Homes development, as highlighted on the Concept Masterplan. These allow access to a range of education, retail, employment and leisure facilities in the local area as set out in more detail within the Transport Assessment.
- 9.23. Higher order facilities in Fareham, Gosport and beyond can be accessed via public transport with bus stops served by regular services being located on Newgate Lane East and Tukes Avenue. Furthermore, unlike any proposed strategic allocation in Fareham Borough, the site's location offers its future residents convenient opportunities to travel on the nearby Bus Rapid Transit (BRT) and cycleway route which currently operates between Fareham Railway Station and Gosport Ferry, with funding in place for its further extension as part of the sub-regional transport network. The BRT runs through Bridgemary / Woodcot and is within easy walking distance of the site.
- 9.24. The Transport Assessment concludes that the site benefits from its location close to a wide range of local services and facilities that are located within a reasonable walking distance and a comfortable cycling distance. On this basis, the proposed development complies with the NPPF in this regard and, in transport and highway terms, the proposals represent sustainable development.
- 9.25. This is consistent with its former identification as an allocation site in the draft Local Plan as well as the findings of the Appeal Inspector who considered the development at Brookers Lane to the south who concluded at para. 51 (CDJ.1):
- "The appeal's development would bring a range of benefits, most notably the delivery of a reasonably substantial amount of housing **in an accessible location with good access to a range of services and facilities**. In the context of the area's current issues with housing delivery, the benefits together carry, at the least, considerable weight in favour of the appeals development" and at para. 52 **"...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**". (My emphasis added).*
- 9.26. Secondly, I turn to adjacency. This criterion is principally concerned with "existing urban settlement boundaries". The site's entire eastern boundary lies immediately adjacent to the 'Urban Area Boundary' for Bridgemary / Woodcot as defined on the Gosport Borough Local Plan 2011-2029 Policies Map (CDE.13), and part of the site's northern boundary lies adjacent to the 'Defined Urban Settlement Boundary' for Fareham, as identified on the Fareham Local Plan Part 2, DSP (June 2015) Policies Map (CDE.2b). Of course, this Policies Map predates the Brookers Lane development which was allowed at appeal in July, 2021, and which is the subject of a current Reserved Matters application (ref. P/22/O841/RM) for 96 dwellings at the time of writing. This development is also adjacent to the appeal scheme.
- 9.27. Finally, the proposals are well related to and well-integrated with the neighbouring settlement.

- 9.28. The proposals are directly linked to the neighbouring settlement of Bridgemary / Woodcot and Fareham through pedestrian / cycle links provided on the northern, southern, eastern and western boundaries of the site, as set out on the Concept Masterplan. These links provide direct and safe connections from Bridgemary / Woodcot and Fareham to significant areas of public open space that are proposed as part of the scheme, including a Neighbourhood Equipped Area for Play (NEAP). This will present a significant social and environmental benefit for existing residents thus helping the new development integrate with the existing community and improving community connectivity by establishing new routes for passage through the site.
- 9.29. It is noted that in considering the site to the south, Inspector Jones concluded "...I see no reason why the appeals development would not be well related to the neighbouring settlement in a functional sense." (CDJ.1, para. 25). However, he also concluded that from a landscape and visual impact perspective, the proposed development could not be seen to be well related to the existing settlement boundary and well integrated with the neighbouring settlement in terms of DSP40 criteria (ii). The Inspector commented on the "rather uncharacteristic extent to which the settlement edge of Bridgemary / Woodcot would protrude westward into the countryside as a result of the development." (para. 23).
- 9.30. However, the circumstances are materially different in the case of the current proposals, which must be viewed comprehensively with the approved residential development at Brookers Lane to the south. A reserved matters application (ref. P/22/O841/RM) at this site is currently with FBC for determination and proposes 96 dwellings, as illustrated on the site layout plan at CDH.19. The Brookers Lane development will extend the settlement edge of Bridgemary / Woodcot westwards up to Newgate Lane East and will form part of the settlement that neighbours the appeal site. When the appeal proposals are viewed comprehensively with the approved development they would not be seen as an uncharacteristic protrusion but rather as a logical completion of the westward extension of Bridgemary / Woodcot, framed by existing and approved development to the north and south in Fareham and set back from the alignment of Newgate Lane East to the west. Thus, the current proposals will effectively complete the extent of residential development to the east of Newgate Lane East.
- 9.31. Concerns were previously raised with regards to the potentially exposed northern edge of the Brookers Lane development. The current scheme proposes a substantial landscape buffer along its western boundary. The western field now retained in the current proposals creates a soft new settlement edge and buffer to Newgate Lane East which will benefit the assimilation of the combined comprehensive site's development within the local landscape.
- 9.32. For all of the above reasons, the proposals are sustainably located, adjacent to, well related to and well integrated with the neighbouring settlement and meet the requirements of criterion (ii).
- 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**
- 9.33. As set out in the application documents and Mr Atkin's Landscape Proof of Evidence, the proposal has been sensitively designed in recognition of its urban edge location, having regard to the character of the nearby countryside, its strategic gap location and the

character of the adjacent settlement of Bridgemaury / Woodcot (this being the key 'neighbouring settlement' in question).

- 9.34. Currently, the predominant character of the existing settlement edge is defined by the late twentieth century development on the edge of Gosport. Built form is predominantly two storey, however there is little scope for it to interact with the adjacent landscape positively due to the rear aspects of much of that housing facing the countryside together with a mix of rear garden property boundaries, rows of garages and a concrete access road. Existing boundary trees soften this to a degree, however this boundary is comprised of an inconsistent single line of mature trees with poor quality remnant hedgerow and fencing beneath, which only weakly filter views of the existing housing.
- 9.35. In this context, the proposed development presents an opportunity to create a well-designed place, consistent with the Government's guidance set out in Section 12 of the NPPF. The design quality of the scheme – indeed, of the comprehensive development of the former HA2 draft allocation – was the subject of detailed discussions between the Council and the appellants between 2018 and 2020 (as described at 6.8 – 6.10 above), when the appellants prepared a draft Development Framework Document (**CDH.18**), building on the design principles described by the Council's HA2 Development Framework plan, to provide more detailed design guidance. This early, proactive engagement between the prospective applicants (now the appellants) and the Council was intended to establish the masterplanning principles for the design of a scheme which would then be formally submitted as an outline planning application.
- 9.36. The layout and scale of the proposed development has been carefully considered to respect the local built form and townscape character of Bridgemaury / Woodcot, albeit the detailed layout and appearance of the development will be 'reserved matters'. In particular, the Concept Masterplan allows for the incorporation of spacious tree lined streets with grass verges and linked green spaces which are characteristic of existing development within Bridgemaury / Woodcot.
- 9.37. As set out in Section 6 above, and described in more detail in the evidence of Mr James Atkin on which I rely, the Concept Masterplan is very much 'landscape led' with a strong landscape framework at its core. Policy DSP40 criterion iii requires that:
- "The proposal is sensitively designed to.....minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;"*
- 9.38. The criterion requires adverse impacts to be "minimised", and this is achieved through the overarching strategy of retaining existing green infrastructure, supplementing this with additional planting within landscape areas and placing built aspects of the proposed development in an immediate and established landscape framework.
- 9.39. This includes a substantial landscape buffer and retained field and hedgerow along the western edge of the site which will soften the edge of the development and replace the (albeit more distant) existing backdrop of residential dwellings and trees along the urban edge of Bridgemaury / Woodcot.
- 9.40. Furthermore, the north / south linear green space acts as a distinct break in the massing of the development and adds a green corridor into the overall scheme. The 'corner cushions' of planting further limit any prominence of built form. These integral landscape features

ensure adverse impacts upon the countryside and strategic gap are minimised through sympathetic design in compliance with criterion (iii).

iv. It can be demonstrated that the proposal is deliverable in the short term

9.41. The appellants are committed to early delivery of the proposals. Miller Homes and Bargate Homes are major housebuilders with a track record of delivery of high-quality housing in the region. An indicative combined housing delivery programme is set out below which confirms that the proposal is deliverable in the short term and therefore compliant with criterion (iv):

Table 2 – Delivery Programme

Programme	Timeframe/Numbers
Grant of Outline Planning Permission	November 2022
Submission of Reserved Matters	May 2023
Approval of Reserved Matters	October 2023
Discharge of Conditions	January 2024
Commencement on site	February 2024
Housing Completions	
1st Unit	October 2024
100th Unit	October 2025
200th Unit	October 2026
250th Unit	October 2027
300th Unit	October 2028
350th Unit	October 2029
375th Unit	April 2030

v. The proposal would not have any unacceptable environmental, amenity or traffic implications

9.42. The proposals are supported by a suite of technical reports which demonstrate that there are no unacceptable environmental, amenity or traffic implications associated with the proposal, as discussed further below and in the Proofs of Evidence from Mr West (Ecology) and Mr Wall (Transport) .

- 9.43. In particular, in terms of environmental implications, the proposals are supported by a shadow HRA (**CDA.15a, b and c**) which sets out the mitigation measures that are required to ensure that there are no adverse effects on the integrity of designated sites.
- 9.44. Furthermore, updated ecology surveys have been submitted which, combined with the proposed ecological mitigation measures, demonstrate that the development will not result in unacceptable harm to protected species.
- 9.45. The Ecology and Planning Statements of Common Ground confirm that FBC's previous concerns with regards to impacts on habitats sites and protected species have fallen away (subject to the necessary mitigation measures being secured by legal agreement / conditions) and that there are therefore no unacceptable environmental implications arising from the proposals.
- 9.46. The application is also supported by an Agricultural Land Assessment. This demonstrates that the relatively small loss of Best and Most Versatile agricultural land (10.8ha) does not represent an unacceptable environmental implication of the proposal and that limited weight should be placed on its loss. This principle has been accepted as part of numerous appeals within the borough, including at the recent appeal at Brookers Lane to the south where Inspector Jones concluded at paragraph 34 (**CDJ.1**):
- "Nonetheless, given the large amount of BMV land in Fareham Borough relative to the comparatively small amount that would be lost, its loss would not represent an unacceptable environmental implication in the terms of LP2 Policy DSP40 (v)."*
- 9.47. The loss of BMV land does not represent an unacceptable environmental implication of this appeal proposal.
- 9.48. I also note that a position of no objection has been reached by all of the following consultees, subject to conditions / planning obligations:
- HCC Flood and Water Management Team.
 - HCC Archaeology.
 - Southern Water.
 - FBC Tree Officer.
 - FBC Environmental Health Officer (Contaminated Land).
 - FBC Conservation Planner.
 - FBC Public Spaces Operations Manager.
- 9.49. With regards to amenity implications, the Concept Masterplan shows how the site could be designed to set back built development from existing dwellings in Bridgemary / Woodcot, with existing boundary vegetation retained and enhanced to minimise any impacts upon the amenity of existing residents. Further consideration of 'amenity' issues such as overlooking, access to outdoor space and sunlight / daylight will be assessed at the reserved matters stage. However, I consider that the proposal will not have any unacceptable amenity implications. I also note that, in the Update Report to FBC's Planning

Committee on 15 June, 2022, Officers concluded that “it is likely that the scheme could be acceptable in amenity terms...”.

- 9.50. In terms of traffic implications, the Council has confirmed that RfR i) is withdrawn, thereby accepting that the proposals will not cause any unacceptable highways or transportation impacts. Whilst the Highway Authority retains a policy-based concern about the principle of a new access to Newgate Lane East, these concerns are not borne out by any technical evidence of harm arising as a result of the proposals, and their concerns are not shared by the local planning authority.
- 9.51. As described by Mr Wall in his evidence, the Newgate Lane East / Newgate Lane priority junction will be over capacity by 2037 and will pose a highway safety issue. The introduction of a roundabout in place of that junction will provide a benefit in this regard.
- 9.52. For all of the above reasons, there is no conflict with policy DSP40.

b) Design, Layout and Quantum of Development

- 9.53. The planning application is supported by a Design and Access Statement which tells the story of the evolution of the proposals in response to the constraints and opportunities of the site and stakeholder consultation.
- 9.54. As set out in Section 8 above, the Concept Masterplan is a product of the constraints and opportunities established through the design process, as well as the design principles that underpin FBC's Development Framework for HA2, and further refined through the Development Framework Document produced in consultation with officers at FBC.
- 9.55. A 'landscape led' approach has been adopted to underpin the Concept Masterplan. The overarching design principles include:
1. Consider the components of the surrounding landscape character;
 2. Retain and make best use of existing landscape elements and features;
 3. Optimise protection and screening for visual amenity receptors (albeit these are limited);
 4. Avoid loss or damage to retained landscape elements and features;
 5. Conserve and enhance ecological fabric;
 6. Utilise existing key connections through the site;
 7. Maximise opportunities to create new connections in the area;
 8. A developable envelope that's informed by the green infrastructure led approach; and
 9. Outward looking development that provides natural surveillance and character to streets and spaces.

9.56. A pre-application concept masterplan which proposed up to 420 dwellings was the subject of consultation with FBC, HCC and the local community in November 2021 (as reproduced below).



Figure 8 - Pre-application Concept Masterplan

9.57. Whilst there were concerns around the principle of development and impact upon the strategic gap, there were no negative comments from FBC's Urban Design Officer on the design and layout of the proposals, other than querying the loss of the western hedgerow.

The Planning Officer also suggested that the development could be pulled eastwards to retain an element of open farmland character next to Newgate Lane East.

- 9.58. The proposals were subsequently revised (see Concept Masterplan at para. 7.3 above) to retain the western field and hedgerow, thereby creating a sizable buffer along the western edge of the site which is to be used as a bird mitigation area in perpetuity. This retains an element of the existing field pattern as open grassland, providing an attractive entrance to the development and a designed edge to the settlement as a transition to the redefined Strategic Gap.
- 9.59. The final concept masterplan illustrates a scheme of up to 375 dwellings with a strong green infrastructure that retains and enhances hedgerows, ditches and trees. This green infrastructure offers a network of pathways and spaces that provide safe and attractive routes. Buildings face outwards ensuring that streets and spaces are well overlooked, welcoming and safe.
- 9.60. The development proposals equate to an average gross density across the site (excluding the Newgate Lane East highway works) of 19.87 Dwellings Per Hectare (DPH). The average net density (excluding all open space and SuDS features) is 38.7 DPH. This is consistent with the approved density for the consented site to the south, which was considered to be acceptable by the Inspector in that case, and represents an efficient use of land in a sustainable location.
- 9.61. We note FBC's Urban Design Officer's comments (dated 19th April 2022, **CDB.11**) that the average density of the scheme is not high, but querying variation in density across the site.
- 9.62. The dwelling mix will be agreed at the reserved matters stage and will be informed by local need. This will also be subject to approval by FBC. As a result, we do not anticipate a dwelling mix that will result in stark density variances across the site (for example a large proportion of apartments). Instead, subtle variations in density will be used as a design tool (not simply a by-product of dwelling mix) to demonstrate best practice principles of placemaking across the site. These principles underpin a scheme that has a cohesive overall character, whilst avoiding banality and a lack of hierarchy. As stated by the Urban Design Officer, *"apartments can be attractively assimilated into streets"*, much as terraces can. These can also be vital tools to create enclosure and natural surveillance over public areas; particularly larger open spaces. Conversely, a subtle reduction in density (more detached and semi-detached houses) can soften the development in more sensitive areas to break up the built form.
- 9.63. The masterplan has been designed by the developers and design team to ensure it is robust, efficient, and does not present unnecessary detailed design challenges that can undermine the delivery of appropriate densities. We note that FBC's landscape consultant has commented negatively on design and layout matters. His comments are strongly refuted and contradict FBC's Urban Design Officer's positive comments that the proposal *"...would provide a suitable landscape led linked GI framework and perimeter block development parcels that can deliver the attributes of good placemaking"*.

c) Housing and Affordable Housing

- 9.64. The proposal is for up to 375 dwellings which will comprise of a mix of unit types and sizes.
- 9.65. The mix of the private market housing will be determined at the reserved matters stage.

- 9.66. 40% of the housing will be provided as affordable housing, comprising a blend of affordable tenures. The tenure, mix and delivery of the affordable dwellings is described in the Affordable Housing Statement (**CDA.12**).
- 9.67. The new homes will make a significant contribution to meeting local housing need and will offer a broad mix of dwelling types and sizes across a range of tenures to help foster a mixed and diverse community and provide opportunities for local people looking to get on the 'property ladder'. As set out in Mr Tiley's Proof of Evidence, the new homes will also make a significant contribution to addressing the Council's considerable and ongoing affordable housing shortage.
- 9.68. The construction of the new homes will also provide economic benefits to the local area through the creation of new jobs and the grant of government funding to the local authority. Once the homes are occupied, new residents will help to boost the economy by increasing local spending and will contribute to the funding of local services through Council Tax payments.
- 9.69. The economic benefits to the local community are described further in the Economics Benefits Statement (**CDA.24**) and in Section 9 below.

d) Highways and Transport

- 9.70. As set out in Mr Wall's Proof of Evidence, the site lies in a highly sustainable location, benefitting from its close proximity to and good connections with a wide range of local services and facilities including retail, schools and employment, as shown in Table 2.1 and Image 2.2 of his Proof.
- 9.71. Walking and cycling are realistic modes of travel to and from the site, with the access strategy providing a permeable and connected development with connections to the north, south, east, and west to reduce travel distance to local facilities and services.
- 9.72. Good quality bus services operate within the local area, with the services 9/9A on Tukes Avenue and the Bus Rapid Transit (BRT) service on Henry Cort Way being particularly attractive to future residents and providing direct and frequent access to Fareham, Gosport, and the wider area. Fareham Rail Station is also accessible by bus and cycle from the site and provides connections to destinations further afield such as Portsmouth, Southampton, Winchester, and London.
- 9.73. We note that Hampshire County Council confirms that there is an adequate range of services and facilities within suitable walking and cycling distance of the site, and that access to public transport opportunities is also acceptable, subject to the delivery of the access strategy proposed. As confirmed by Mr Wall, all highway improvement works have been agreed with HCC, including financial contributions as set out in the main S106 Unilateral Undertaking, works to be subject to a S278 Agreement, and works that will be directly delivered by the Appellants.
- 9.74. Vehicular access to the site is proposed from Newgate Lane East through the delivery of a new four-arm roundabout junction, designed in accordance with relevant standards and in a manner that does not significantly impact on the utility / function of Newgate Lane East.
- 9.75. A full Pre-Application Design Submission has been made for the proposed roundabout junction and is supported by an Independent Road Safety Audit, which confirms there are

no residual safety concerns. HCC has confirmed that in geometry terms, subject to some minor revisions, the proposed access roundabout is acceptable. Capacity assessment of the proposed junction has been presented in the Transport Assessment (TA) which demonstrates that the junction will operate within capacity, will maintain a free flow of traffic on Newgate Lane East and improve the safety of turning movements at its junction with Newgate Lane.

- 9.76. The TA demonstrates that the local highway network can accommodate the traffic generated by the development during the peak periods without resulting in a 'severe' residual cumulative impact to the network operation or unacceptable traffic implications and is therefore in full accordance with the policies set out in the NPPF and Policy DSP40.
- 9.77. The Transport Assessment concludes that the development proposal fully satisfies local and national transport policies and should be considered acceptable in transport terms.
- 9.78. At planning application stage, HCC recommended refusal due to an alleged conflict with paragraphs 110/111 of the NPPF, but they also commented that their technical objections can potentially be overcome by the submission of additional information.
- 9.79. i-Transport on behalf of the appellants then submitted a "HCC Highways Response (TA Addendum)" to Hampshire County Council, and this was the subject of discussions between the parties including a meeting on 29 August, 2022.
- 9.80. Following further dialogue, HCC wrote to PINS on 9th September, 2022, to confirm its final position, being:

"The HA has two fundamental objections to the proposals in relation to Policy DM2 of LTP4:

• Newgate Lane has been recently redesigned to offer by-pass levels of service to road users and is a traffic sensitive road (as accepted by the Appellant) and any form of new access will have a detrimental impact to the Improving Access to Fareham and Gosport Strategy and therefore a severe impact under NPPF.

• The proposals do not give due regard to the policy in that alternative access forms have not been explored or tested under this application that may better accord with policy DM2, for example a left in/ left out junction form that would not change priorities on Newgate Lane East and would cause significantly less delay to through traffic on Newgate Lane East in comparison to the proposed roundabout site access."

Its letter confirms:

"Our objection is not based on a technical traffic assessment case, which does not determine a direct impact as severe using a local traffic flow assessment, but rather on the policy principle that doing so compromises the strategic function and operation of the network. In this way, accepting a new access onto Newgate Lane when considering its function would have an impact of a severe nature..."

The letter concludes:

"As such, HCC considered that non-compliance with this policy was grounds for refusal and was suitably covered under Reason for Refusal i). Disappointingly, Fareham Borough

Council did not share this view and, as HCC understands it, have declined to continue to defend Reason for Refusal i) on this basis. I just wanted to make you aware that HCC do still consider the above an unresolved issue and valid reason for dismissing the appeal."

9.81. RfR i) states:

"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;"

The Planning SoCG confirms that the local planning authority, Fareham Borough Council, is not defending RfR i) – in doing so, the LPA's revised position is that the development will not result in an unacceptable impact on highway safety **or** operation, and that it will not have a severe impact on the road network. However, HCC is maintaining an objection "**on the policy principle** that doing so compromises the strategic function and operation of the network." (my emphasis). It appears that the LPA has considered the Highway Authority's position and has not accepted it.

Mr Wall's evidence addresses the extent to which the appeal proposal impacts the utility of Newgate Lane East. He concludes (at para. 3.3.29 of his Proof):

"In practical terms, the junction would operate very well, without creating any material delay or impediment to through traffic on the corridor and would have no material effect on the utility of Newgate Lane East in moving traffic into or out of the peninsula. The impacts of the delivery of the roundabout would be negligible in relation to traffic impacts on Newgate Lane East."

9.82. With regard to operational matters, Mr Wall's evidence reviews the baseline operation of the Newgate Lane East / Newgate Lane priority junction, the modelling results for which are set out in the i-Transport "HCC Highways Response (TA Addendum), Section 4. As described by Mr Wall, on whose evidence I rely, the existing Newgate Lane East / Newgate Lane junction will operate at significant over capacity by 2037 and in his opinion, highway improvements will be required to this junction in any event. Mr Wall also describes the fact that, within highway land, there is only scope to provide a signalising of this junction, but that a roundabout (which is what the appeal proposals include) is a preferable solution. On this basis, the proposed roundabout junction should be regarded as a benefit of the appeal proposals.

e) Strategic Gap

9.83. The appeal site lies within the Stubbington / Lee on Solent and Fareham / Gosport Strategic Gap, as illustrated on the plan below (a full sized version of which was submitted with the planning application, **CDA.3**). This plan also shows recently approved planning applications and draft housing allocations within the gap (as discussed further below).

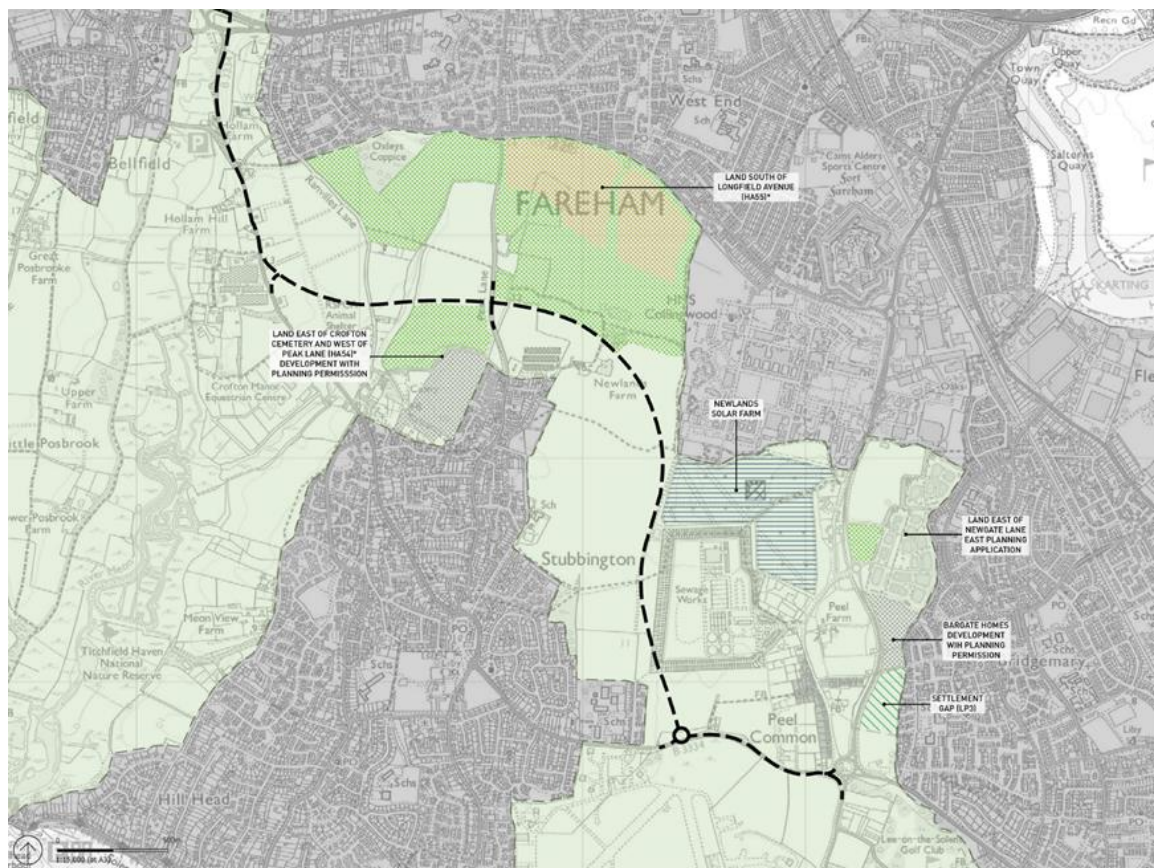


Figure 9 – Strategic Gap Plan

- 9.84. Policy CS22 'Development in Strategic Gaps' provides that land within strategic gaps will be treated as countryside, and proposals will not be permitted either individually or cumulatively where they significantly affect the integrity of the gap.
- 9.85. Policy CS22 does not therefore impose a blanket ban on development in the strategic gap, but guards against significant adverse effects on its functionality and value.
- 9.86. Policy CS22 must also be read alongside Policy DSP40 in the absence of a five year housing land supply. The strategic gap test within Policy DSP40 (criterion iii) is not that there should be no adverse effects on the gap, but that proposals "minimise any adverse impact" through sensitive design; this is a lower test.
- 9.87. As set out in Section 5 above, Appeal Inspectors have recently confirmed that the weight attributable to any conflict with Policy CS22 would be reduced and outweighed by compliance with Policy DSP40, given the five year housing land supply position at the time of those decisions and age of the development plan.

- 9.88. The evidence base to the emerging local plan includes a review of strategic gaps (Technical Review of Areas of Special Landscape Quality and Strategic Gaps, 2020, **CDG.6**). Although the review does not present any specific changes to the strategic gap boundaries, in respect of the site and its context, the study does note that this part of the gap is 'minimum functioning and weak' (pg. 105, para. 1 of Technical Review).
- 9.89. Mr Atkin's Proof of Evidence sets out that by adopting a sensitive landscape led approach which minimises adverse impacts, the proposal is compliant with both Policy DSP40 (criterion iii) and Policy CS22. The Landscape and Visual Impact Assessment (LVIA) (**CDA.17a**) sets out that the site is well placed to accommodate development without undue impacts on the role and function of the strategic gap as a whole, on the basis that:
1. A substantial distance will be retained across the wider gap, between the site and Stubbington;
 2. In terms of visibility, the site is physically and visually well contained, placed within a strong framework of green infrastructure and the settlement edge – furthermore, the site (and potential development) will not be visible across the gap from Stubbington;
 3. The surrounding context and urbanising influences, including the residential areas of Peel Common, Bridgemary and Woodcot, together with the approved 99 home development to the immediate south, reduce the degree of change as they provide a settlement edge context;
 4. There is the opportunity to strengthen and enhance the green infrastructure network and connections through the area through the linear routes which cross broadly north to south through the site; and
 5. With regard to green infrastructure provision, there is the opportunity to incorporate substantial mitigation that will successfully minimise landscape and visual effects.
- 9.90. In particular, following pre-application consultation, the development now proposes that the western field and hedgerow are retained, thereby creating a sizable buffer along the western edge of the site which is to be used as a bird mitigation area in perpetuity. The Inspector at the Crofton Cemetery appeal recognised the benefit of such an approach in her report (**CDJ.2**) at para. 46 where she stated:
- "Furthermore, the use of the land to the north of Oakcroft Lane as an ecological enhancement area would contribute to ensuring that a physical and visual level of separation between Stubbington and Fareham would be maintained." She concluded at para. 48 "I am therefore satisfied that the use of the land south of Oakcroft Lane for housing would not lead to an unacceptable erosion of the integrity of the wider gap, and so would not undermine its effectiveness and I find no conflict with policy CS22 of the CS or DSP40 of the LP in this regard."*
- 9.91. There are similarities between the East of Crofton Cemetery scheme and the appeal proposal in that the Crofton Cemetery housing site extends a similar distance northwards as existing development to its immediate east; and the appeal scheme extends a similar distance westwards as the consented scheme to the south, similarly maintaining the physical level of separation between Stubbington and Fareham, and Stubbington and Bridgemary / Woodcot respectively. Furthermore, notwithstanding the position of the site in its local context, nor the adjacent land uses of the Newlands Solar Farm and Peel

Common Waste Water Treatment Works, there remains a distinct and robust physical and visual sense of separation to the west of Newgate Lane East, augmented by the tree and woodland cover and built development around Stubbington and Peel Common. The strategic gap will continue to function in this sense and maintains distinction between Stubbington and Fareham / Gosport.

9.92. Overall, the proposals will:

1. Not result in the coalescence of local settlements;
2. Allow a visual 'sense' of separation to be maintained;
3. Retain the character and identity of the adjacent settlements; and
4. Protect the value of green infrastructure.

9.93. Indeed, although the Council's position has now changed, earlier iterations of the emerging Local Plan were resoundingly clear that development could be accommodated within this part of the gap, with the proposed allocation of HA2. The Council's 2019 Strategic Housing and Employment Land Availability Assessment (SHELAA, **CDG.2**) assessed the suitability of the appeal site and concluded "*Development could be accommodated without significant effects on the landscape character of the wider area (following construction of Newgate Lane South) or the integrity of the Strategic Gap*".

9.94. As part of the Regulation 19 Revised Local Plan (**CDF.4**), the Council has proposed two sizeable allocations within the gap. Allocation HA55 'Land South of Longfield Avenue' proposes 1,250 dwellings on the southern edge of Fareham, and north of Stubbington. There is a current undetermined outline planning application at the site for up to 1,200 dwellings, care home, primary school, retail uses, community centre, open space and supporting infrastructure (ref. P/20/0646/OA) which was submitted in July 2020 by Hallam Land Management.

9.95. Allocation HA54 'Land east of Crofton Cemetery and west of Peak Lane' proposes 180 dwellings on the northern edge of Stubbington, and south of Fareham.

9.96. Persimmon Homes' full application for 206 dwellings at the site (ref. P/20/0522/FP) was refused by FBC on 18th February 2021. The principal reasons for refusal related to the quantum/design of development rather than the principle of development within the strategic gap. The subsequent appeal was allowed on 10th January 2022 (Appeal Ref: APP/A1720/W/21/3275237) (**CDJ.2**). The Inspector concluded that the proposal would not lead to an unacceptable erosion of the integrity of the wider gap, and would not undermine its effectiveness and found no conflict with policies CS22 or DSP40 in this regard.

9.97. It is therefore clear that both the Council and Appeal Inspectors have confirmed that the principle of residential development within the strategic gap can be acceptable.

9.98. The co-joined appeals at Land West of Newgate Lane East (Appeal ref: APP/A1720/W/20/3252180 and 3252185, **CDJ.7**) related to the combined development of up to 190 dwellings (south-west of the current appeal site and north of Woodcote Lane).

9.99. Whilst those appeals were dismissed, in his decision letter dated 8 June 2021 (**CDJ.7**), the Inspector, Mr. I. Jenkins, commented on those appeal proposals in relation to the Spatial

Development Strategy of the extant development plan at paras. 78–86. At para. 84, he commented:

"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 of development within the gap."

9.100. This adds significant weight to the case in support of development at the former HA2 housing allocation, given that a Planning Inspector has concluded that housing development to the east of Newgate Lane East would be potentially acceptable in terms of its impact on the strategic gap. In allowing the subsequent appeals at Brookers Lane, east of Newgate Lane East, Inspector Jones affirmed this view.

9.101. At paragraph 31 of the appeal decision (**CDJ.1**) at Brookers Lane, Inspector Jones concluded that Bargate Homes' development of up to 99 dwellings on the southern part of the former HA2 site *"would not be a significant effect on the integrity of the Gap, be it individually or cumulatively."* (my emphasis added). By commenting on its cumulative effect, the Inspector must be referring to its development as part of the wider development of the HA2 site because that is the only area of land that can be developed together with that appeal site. Inspector Jones was aware that the current appeal site was actively being promoted for development, having been given copies of representations on the Fareham Publication Draft Local Plan 2037 (Regulation 19) made by Pegasus Group on behalf of The Hammond Family, Miller Homes and Bargate Homes and submitted as part of the Appellant's evidence in that case. These representations stated at paragraph 3.73:

"For all of these reasons, the Council is encouraged to reinstate the Policy HA2 housing allocation for about 500 dwellings. The site is controlled by two highly reputable housing developers – Miller Homes and Bargate Homes – who have a strong local track record of delivery and who are keen to bring it forward for development immediately, such that the site can make a significant contribution to the Council's five year housing land supply."

9.102. A Planning Inspector has therefore concluded that the development of the current appeal site would not have a significant effect on the integrity of the strategic gap.

Now that development of the southern part of HA2 has been granted planning permission and is to proceed, and that it has been confirmed by an Inspector that development of the whole HA2 site will not significantly harm the integrity of the strategic gap, it would have been entirely justifiable for the Council to take these significant changes in circumstances into account and to work positively with the applicants to deliver a scheme which both makes a significant contribution to Fareham's housing needs and is designed to create a new landscaped edge to the strategic gap at this point. However, that opportunity has not been taken and as a result the Appellants have had to exercise their right to appeal.

f) LVIA, Landscape and Open Space

9.103. The landscape impact of the proposed development has been assessed in the Landscape and Visual Impact Assessment (LVIA) submitted with the application. The Council's consultation response on landscape and visual matters acknowledged that the LVIA was prepared in accordance with relevant guidance.

- 9.104. The LVIA confirms that the site is not subject to specific statutory or non-statutory landscape related designations, nor is it included within an “Area of Special Landscape Quality” as defined in the emerging Reg.19 Revised Publication Local Plan. The site therefore cannot be regarded as forming part of a “valued landscape” in NPPF para. 174a terms.
- 9.105. The LVIA considers the character of the site at the national, county and specifically borough level, where it falls within the Woodcot/Alver Valley character area (sub area O8.1a). The report notes that the site sits within a variable pocket of landscape and, notwithstanding the nature of the agricultural landscape between Newgate Lane East and Woodcot/Bridgemary, this cannot be separated from the extensive urbanising influences which surround and frame it, particularly in the context of the more recent severance of the agricultural land that has arisen from the route of the recently constructed Newgate Lane East, and the planning permission for up to 99 dwellings to the immediate south.
- 9.106. A comprehensive and robust scheme of mitigation has been developed to successfully mitigate both landscape and visual effects and, more importantly assimilate the proposed development into the landscape and deliver a high-quality landscape context. Key aspects of the approach to mitigation are summarised as:
1. Broad limits to the spatial extent of the development envelope to create robust landscape buffers at key points of the site. This includes the retained western field, adjacent to Newgate Lane East (providing a substantial buffer) and northern and southern landscape buffers to the edges of the site (and interface with consented residential development and open space respectively);
 2. Division of the development envelope into a series of smaller scale parcels so as to maximise the retention of internal field boundaries (noting some limited losses remain);
 3. Creation of a diverse network of open spaces, including linear parks and a central green, interconnected by the proposed linear green infrastructure;
 4. For existing vegetation, retain and enhance these components through supplemental planting and enhanced programmes of management – landscape planting will be included in all landscape buffers, subject to appropriate detailed design; and
 5. A limit of 'two storey dwellings' in respect of the proposed height of built form.
- 9.107. The report concludes that, in the context of the very limited and highly localised landscape and visual effects, the proposed development is considered to be acceptable in landscape and visual terms.
- 9.108. Public Open Space will be provided on-site which will include informal amenity space and a NEAP which will be accessible to the new residents and wider community. Pedestrian links will be provided to promote accessibility and interconnectivity of these spaces.

g) Ecology

- 9.109. The ecological implications of the proposals are addressed by David West’s Proof of Evidence on which I rely. Policy DSP13 establishes the key principles for development proposals in respect of biodiversity, including the protection of designated sites and protected and priority species. The biodiversity network should not be fragmented and where possible biodiversity ‘gain’ should be sought.

- 9.110. The Ecological Impact Assessment (**CDA.16a and b**) submitted with the application describes the habitats on site and assesses the potential for protected species. The site has been assessed as being of no more than local value in terms of habitats present with the features of relatively higher interest including the mature trees and hedgerow network being retained within the scheme design. Survey work has identified the site as supporting a relatively low diversity of foraging and commuting bats, breeding and wintering birds and a population of slowworms is also present on site.
- 9.111. The proposed mitigation and compensation includes the retention and positive management of retained features and the creation of new habitats which would deliver an enhancement at the site and an overall net gain in biodiversity of 10.12 habitat units, which is an increase of 23.01% (further details are set out within the Biodiversity Net Gain Assessment, **CDA.14**) – significantly in excess of the future 10% mandatory requirement.
- 9.112. A translocation exercise for reptiles, sensitive lighting scheme in respect of bats and the provision of new bat and bird units within newly construction dwellings has also been proposed.
- 9.113. HCC Ecology's comments (8th March 2022, **CDB.17**) requested further survey data in respect of bats and nesting birds. All necessary information has been supplied in the form of an updated Ecological Impact Assessment (ECOSA, 2022) following the completion of ecological surveys on site. This update assessment results in no change to the impact assessment and mitigation and enhancement recommendations made at the time of the application.
- 9.114. It is common ground between the Council and the Appellants that in respect of on-site ecological features, the Appeal scheme will not give rise to significant adverse effects upon the species and their habitats found within the site, subject to the application of appropriate mitigation measures, identified within the Ecological Impact Assessment and to be secured by S106 Agreements and/or condition. As such, the Appeal scheme is in accordance with Policies CS4 and DSP13 of the Local Plan and paragraphs 174 and 180 of the NPPF.
- 9.115. Policy DSP15 established the Council's policy for dealing with the effects of recreational disturbance on the Solent SPAs specifically. The Solent Recreation Mitigation Definitive Strategy was updated in April 2018 and establishes a per dwelling contribution (based on unit size) based on the necessary funding required to appropriately manage the impact of additional residents arising from new development in terms of provision and management of existing and additional recreational space. A full payment will be secured through a legal agreement.
- 9.116. In relation to the New Forest SAC/SPA/Ramsar, Fareham Borough Council has adopted an interim mitigation strategy ('Implications of Natural England advice on New Forest Recreational Disturbance', 7th December 2021) which includes a series of projects to improve and manage open spaces within the Borough to deflect visits from the New Forest. It is proposed that a contribution of £247.05 per dwelling is made in accordance with the interim strategy, to be secured through legal agreement.
- 9.117. The northern part of the site is covered by an area identified as a 'Secondary support area' (F23) for Solent Waders and Brent Geese whilst part of the central and southern portions of the site are identified as 'low use' in this regard (F15). Policy DSP14 sets out that applications resulting in a 'direct effect' may be subject to appropriate assessment.

- 9.118. To mitigate the partial loss of F15, it is proposed that a Winter Bird Mitigation Area measuring 5.0 ha is created at Old Street, Stubbington which will enhance the wader and brent goose network. A Winter Bird Mitigation Strategy setting out the background, rationale and proposed management of the Mitigation Area is included within the shadow HRA. This mitigation strategy has been approved as part of the appeal allowed at Brookers Lane to the south (APP/A1720/W/21/3269030). Originally, it was agreed with Natural England that the proposed mitigation area was capable of mitigating the loss of F15 associated with three sites, Newgate Lane East (at Brookers Lane), Land at Newgate Lane (South) and Land at Newgate Lane (North). Following the unsuccessful appeals at the latter two sites, it is now proposed that the strategy is secured to mitigate the loss of F15 for this current appeal, in accordance with the 'cluster' approach set out within the 'Fareham Borough Solent Waders and Brent Geese Mitigation Solution' dated 7th December 2021.
- 9.119. To mitigate the loss of F23, it is proposed that an on-site Winter Bird Mitigation Area measuring approximately 2 hectares is also created. This will be located at the western extent of the site (a field compartment which is currently part of F15). A Winter Bird Mitigation Strategy setting out the proposed management of the on-site Mitigation Area is included within the shadow HRA.
- 9.120. The proposed approach to mitigation provides a significant increase in habitat quality (ensuring suitable habitat every year as opposed to only when suitable crops are planted) and security in-perpetuity.
- 9.121. Natural England have identified that there is the potential for nutrients arising from increased wastewater from residential development to affect the qualifying features of European designated sites in the Solent.
- 9.122. The shadow HRA submitted with the application includes a nutrient calculation using the methodology set out in Natural England's 'Advice on Achieving Nutrient Neutrality for New Development in the Solent Region' 2020. This shows that the proposed development will result in a net decrease in Total Nitrogen.
- 9.123. Since the planning application was submitted, Natural England has updated its guidance on achieving nutrient neutrality (letter to LPA's 'Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites' dated 16th March 2022, **CDH.2**) and more recently has again updated their Nutrient Calculator 'Solent Nutrient Budget Calculator – Version 2' issued on 21st April 2022.
- 9.124. Mr West reports that the Council and Appellant agree that, in principle, degradation of water quality from increased nitrogen outputs can be mitigated through the purchase of 'nitrogen credits' from a suitable mitigation scheme. This is secured by legal agreement between the mitigation provider and Fareham Borough Council and provides mitigation through removal of land agricultural use or through treatment wetlands. For the project, the provision of the nitrogen credits is secured by a contract between the Appellants and the mitigation provider which secures the required mitigation in the event the appeal is allowed.
- 9.125. The shadow HRA (**CDA.15a, b and c**) concludes that with the application of mitigation, as set out above, there would be no impact on the integrity of any habitats site.
- 9.126. The development proposals are therefore not caught by para. 182 of the NPPF because significant effects on habitats sites can be appropriately mitigated, and therefore the presumption in favour of sustainable development does apply.

h) Arboriculture

- 9.127. The application is supported by an Arboricultural Impact Assessment (AIA, **CDA.13**) which provides an assessment of the existing trees on site.
- 9.128. The AIA concludes that the loss of trees can be readily mitigated and the retained trees can be adequately protected during construction activities to sustain their health and longevity, which can be secured through an Arboricultural Method Statement.
- 9.129. FBC's tree officer has raised no objection to the proposals.

i) Flood Risk and Drainage

- 9.130. The application is supported by a Flood Risk Assessment (FRA, **CDA.20**). The site is located in Flood Zone 1. The FRA sets out that the proposed development will incorporate a sustainable drainage system that will discharge surface water at a suitably restricted rate into the existing watercourses on site and provide storage for all storm return periods up to and including the 1:100 year rainfall event with an allowance for climate change.
- 9.131. The exact nature of the storage will be confirmed at detailed design stage but can be accommodated using a variety of SuDS methods such as permeable paving, swales and attenuation basins. Attenuation features can be addressed through a comprehensive approach to detailed landscape design, ensuring that these sensitively integrate with the landscape and ecological mitigation proposals in addition to their functional role.
- 9.132. Foul water from the site will be drained into the public foul sewer beneath Brookers Lane via the approved development to the south. Where possible this will be via gravity, however, due to the very shallow gradients of the site it is likely that some areas of the proposed development will need to be pumped to allow this connection.
- 9.133. This FRA concludes that the site is not at risk of flooding from tidal or fluvial sources, overland flows or groundwater and the proposed development is suitable in terms of flood risk.
- 9.134. Neither the Local Lead Flood Authority (HCC) nor Southern Water have raised any objections to the proposals, subject to the imposition of conditions.

j) Noise

- 9.135. Having regard to Policy DSP2 and the NPPF, a noise assessment has been undertaken in accordance by Tetra Tech, who are accredited by the Institute of Acoustics.
- 9.136. The noise survey results confirm that the dominant noise source in the area is road traffic noise from Newgate Lane East.
- 9.137. The noise modelling concludes that noise limits for external amenity areas outlined in BS 8233 are met across the site with no mitigation in place, and no further measures are required.
- 9.138. All indicative residential spaces will benefit from standard double glazing with alternative means of ventilation across the majority of facades.

- 9.139. The assessment concludes that the proposed noise mitigation is sufficient to reduce the effects of identified sources of noise to below adopted thresholds (within the context of BS 8233) and avoid the Significant Observed Adverse Effect Level (SOAEL), and that the development is acceptable with regards to noise.
- 9.140. The Airport Manager at Solent Airport Daedalus has raised concerns regarding the potential for noise complaints from future residents of the development as part of their comments on the planning application. We note that this issue was considered as part of the planning application for 75 dwellings on land southwest of the appeal site (known as 'Newgate Lane North') – ref. P/18/1118/OA. During the course of that application, FBC's Environmental Health Officer requested that an Aircraft Noise Assessment be undertaken to survey aircraft noise levels associated with Solent Airport, and the potential impact of this upon the proposed residential development. Hepworth Acoustics undertook this assessment in December 2018 (**CDB.29**) which covered not only the Newgate Lane North site, but also the associated application for 115 dwellings at 'Newgate Lane South' (P/19/0460/OA), immediately to the south. The assessment concluded that no significant noise impact attributable to Solent Airport is anticipated at the two development sites and that no additional mitigation would be necessary to adequately control internal daytime noise levels, as standard thermal double glazing and non-acoustic trickle vents will be adequate in that regard. FBC's Environmental Health Officer agreed and raised no objection in his consultation response dated 8th January 2019 (**CDB.30**).
- 9.141. Given that the current appeal site lies further away from Solent Airport than both Newgate Lane North and Newgate Lane South, I see no reason to reach a different conclusion to that set out above. I also note that FBC's Environmental Health Officer has not raised any concerns in respect of the current proposals. Furthermore, no such concerns were raised in respect of the approved development of 99 dwellings immediately to the south.
- 9.142. For all of the above reason, there will be no unacceptable noise issues associated with the proposed development.

k) Air Quality and Odour

- 9.143. The application is accompanied by an Air Quality Assessment (AQA). The AQA identifies potential effects during the demolition and construction phases, including fugitive dust emissions from site activities, such as earthworks and construction. It concludes that, with mitigation measures in place such as dust suppression, the effects from the construction phase are not predicted to be significant.
- 9.144. In terms of the operational phase, detailed dispersion modelling of traffic pollutants has been undertaken, which take into account exhaust emissions from additional road traffic generated due to the proposed development.
- 9.145. The AQA concludes that the effects associated with the proposed development in respect of Nitrogen Dioxide (NO₂) and Particulate Matter (PM) is 'negligible' and below the Air Quality Objectives, and no further mitigation is required to protect future occupants.
- 9.146. The AQA also considers odour, given the location of the waste water treatment works west of the site. The proposed residential development site will mostly be located within an area (zone C) where the odour impacts from the waste water treatment works are not significant, as such no mitigation will be required in this area. It is considered that the

odour may be potentially detectable at the western corner of the development site (zone B) on occasions and as such, ideally private amenity space should not be located in this area. The concept masterplan reflects this position with private rear gardens excluded from zone b.

9.147. No concerns have been raised by FBC's Environmental Health Officer in respect of either air quality or odour.

l) Sustainability

9.148. Policy CS15 'Sustainable Development and Climate Change' provides that development should:

- Make efficient use of land;
- Seek to properly manage flood risk and waste impacts; and
- Meet Code for Sustainable Homes Level 6.

9.149. The first two criteria are addressed elsewhere in this section and within the supporting technical reports. The Code for Sustainable Homes has now been withdrawn (by virtue of the Written Ministerial Statement of 25 March 2015).

9.150. The proposed development commits to:

1. Construction to take place in accordance with a Construction Environmental Management Plan (CEMP);
2. Installation of electric vehicle charging points;
3. Water efficiency measures to seek to meet the government's optional standards requirement of no more than 110 litres per person per day;
4. Consideration of internal measures such as low energy appliances, lighting and heating systems; and
5. Compliance with Part L of the Building Regulations which takes the reduction in emissions from at least 19% to 31%.

m) Education

9.151. HCC's Children's Services Department, as the Local Education Authority, provided comments on the application on 8th March 2022 (**CDB.15**). The comments sought to secure a contribution of £2,161,125 to meet the cost of an additional 113 primary places and £1,987,798 for secondary places, together with £500,000 for early years. In addition, cycle and footpath improvements are requested from the development to the identified catchment schools to ensure safe travel to school.

9.152. The Appellants' education consultant, EFM, responded on 1st April 2022 (**CDB.31**) raising a number of concerns with the approach taken by the LEA in respect of reliance on catchment schools; places existing locally; falling rolls; distance to catchment schools; and the proposed use of contribution funding.

- 9.153. The LEA's response dated 20th April 2022 (CDB.32) proposed to reduce the requirement for a contribution by 50% in relation to the primary and secondary contributions in light of the concerns raised by EFM, and acknowledged that no additional school places (primary or secondary) would be required to accommodate the additional pupils generated by the development. It has revised its request for contributions to "school infrastructure improvements".
- 9.154. The Appellants are willing to pay a financial contribution towards education but they are bound by the Community Infrastructure Levy (CIL) Regulations. In the opinion of the Appellants, the justification for the financial contribution provided by the LEA is not in compliance with CIL Regulation 122 because (1) there is spare pupil capacity in nearby schools and (2) the proposed school infrastructure improvements will not increase pupil capacity. A contribution amount has been agreed with the LEA without prejudice and this is included in the main S106 Unilateral Undertaking as a "blue pencil" clause for the Inspector's consideration.
- 9.155. Financial contributions towards off-site improvements to walking and cycling routes and to public transport infrastructure have been agreed between the Appellants and the County Highway Authority, as confirmed by the evidence of Tim Wall and as set out in the ASoTM.

n) Third Party Representations

- 9.156. I have reviewed the third party comments submitted to the Council on the planning application, of which there were 148 in number, as summarised in the Officer's Report to Planning Committee dated 15 June, 2022. There was one letter of support (from a couple who are Housing Association tenants in Bridgemary and who are seeking larger accommodation) but all other respondents were objecting to the proposals. The third party representations cover matters that are, to a great extent, addressed by the Council's Reasons for Refusal. I have provided a response to these matters in relation to the themes I have identified, and, in my opinion, none of the issues justify the refusal of planning permission.

10. Planning Balance

Compliance with the Development Plan

- 10.1. In the situation where a five-year housing land supply cannot be demonstrated, Policy DSP40 is engaged.
- 10.2. Whilst it is accepted that Policies CS6, CS14 and DSP6 serve to direct development to within the settlement boundaries, Policy DSP40 establishes that development will be permitted outside these limits where there is no five-year housing land supply and where the relevant criteria are met. The weight afforded to Policies CS2, CS6, CS14 and DSP6 is reduced given that the Council's housing requirement has not been reviewed within the last five years, they are derived from settlement boundaries which are based on an out of date housing requirement and that the Housing Delivery Test has been failed.
- 10.3. Section 9 above demonstrates that the proposal is:
1. Relative in scale to the five-year housing land supply shortfall;
 2. Well located and integrated with the neighbouring settlement, in a sustainable location;
 3. Sensitively designed and respects the landscape and character of the area;
 4. Deliverable in the short term; and
 5. Will not result in any unacceptable environmental, amenity and/or traffic implications.
- 10.4. In the balancing exercise the urbanising effect of development of a greenfield site is therefore weighed against Policy DSP40 and, having met all the criteria described above, I conclude that the proposal represents well designed, integrated, and sustainable development which can bring forward up to 375 new homes in the short term.
- 10.5. Similarly, the proposal is also compliant with Policy CS22 which allows development within the strategic gap where it does not adversely affect the integrity of the gap. Section 9 above establishes that the proposal would:
1. Not result in the coalescence of local settlements;
 2. Allow a visual 'sense' of separation to be maintained;
 3. Retain the character and identity of the adjacent settlements; and
 4. Protect the value of green infrastructure.
- 10.6. The provisions of policy CS22 are therefore met.
- 10.7. Accordingly, the proposals are in accordance with the development plan, taken as a whole, and paragraph 11(c) of the NPPF is engaged and they should be permitted 'without delay'.
- 10.8. Notwithstanding the above, the Housing Delivery Test result (January 2022) is below 75% and as such the most important policies for determining this appeal are out-of-date,

regardless of any other consideration. As such, planning permission should be granted unless the policies referenced in footnote 7 of the NPPF provide a clear reason for refusal (that is not the case here) or any adverse impacts significantly and demonstrably outweigh the benefits (the tilted balance) – considered further below.

The Importance of Housing Delivery and the NPPF

- 10.9. At Section 5 of Mr Tiley’s Proof, entitled “The Housing Crisis”, he provides an important contextual commentary on the national and local housing positions.
- 10.10. With regard to the national position, he notes that the Barker Review (2004) identified the need to deliver 250,000 homes per annum to prevent spiralling house prices and a shortage of affordable homes, but that between 2004 – 2012 an average of only 178,000 homes per annum were built. The NPPF was then introduced in 2012, one of the Government’s objectives being to boost significantly the supply of housing, but in the 2012 – 2016 period an average of 155,000 homes per annum were built.
- 10.11. As a result, in 2016, the Select Committee on Economic Affairs to the House of Lords published the Building More Homes report (July 2016) which identified the need to deliver 300,000 homes per annum. This has remained the Government’s aspiration since that time, but in the 2016 – 2018 period an average of 210,000 homes per annum were built.
- 10.12. In response, the Government published a new NPPF in 2018. This sought to address the growing national backlog in housing delivery through a number of mechanisms including the Standard Method for calculating the minimum housing need in each LPA area. In 2018 – 2021 an average of 234,000 homes per annum were built, which was an improvement but still substantially below the 300,000 home target. The cumulative shortfall in national housing supply is therefore over one million homes in 17 years, causing significant difficulties for households trying to find appropriate housing.
- 10.13. Turning to the local position, Mr Tiley notes that the Core Strategy was adopted in 2011 – before the publication of the first NPPF – and that it contains a housing requirement of 3,729 homes (or 186 homes per annum) to respond to the needs of Fareham borough. Welborne was conceived to address sub-regional needs (so not just needs in Fareham) and, through the preparation of a separate Part 3 plan (adopted June 2015) was proposed to provide 6,500 – 7,500 homes (325 – 375 homes per annum) over the period to 2036. Mr Tiley contrasts the Core Strategy’s housing requirement of 186 hpa with the Standard Method requirement of at least 541 hpa, and he states that inevitably developments which do not accord the policies of the development plan will need to be approved in order to respond to local housing needs. This is even more the case because Mr Tiley cites the Council’s record of substantial under-delivery against the housing requirements of both the Core Strategy and the Welborne Plan of between 2,926 and 3,676 homes over the last 15 years (notwithstanding that Welborne was conceived to address sub-regional needs). This has led to what Mr Tiley describes as a “chronic shortfall” in local housing supply, with likely consequences including a worsening accessibility to the local housing market, constrained population growth, an ageing of the local population, and constrained local economic growth.
- 10.14. Mr Tiley also cites the fact that in Fareham households have to spend 10.74 times the median income to access a median priced house, compared to 9.05 times nationally, indicating that housing has become particularly inaccessible in Fareham. At least in part

this will have been caused by the chronic shortfall in housing supply and the local economic impacts that are likely to have resulted.

10.15. Mr Tiley concludes:

“The chronic shortfall to date is not only a material consideration which bears upon the weight afforded to any conflict with the policies which have given rise to this situation and to the weight afforded to housing which will address this situation, it also has a number of policy consequences...”

The Tilted Balance

10.16. One of the fundamental objectives of the NPPF is to boost the supply of housing as part of the presumption in favour of sustainable development. The Housing Delivery Test was introduced in 2018 to measure housing delivery in each LPA area over the preceding 3 years. Paragraph 74 of the NPPF sets out that a 20% buffer should be added to a LPA’s 5 year requirement if that LPA has a HDT result of less than 85%. Paragraph 11d and Footnote 8 state that, where an LPA has a HDT result of less than 75% of the housing requirement over the previous 3 years, the most important policies for determining a residential application or appeal are out-of-date and the “tilted balance” is engaged, manifested in the presumption in favour of sustainable development. In this case, Fareham has failed the HDT. As described by Mr Tiley, this HDT failure is symptomatic of a persistent failure to deliver a supply of housing to meet local needs.

10.17. The NPPF test provides that in the absence of a five year housing land supply / failure to meet the Housing Delivery Test, planning permission should be granted without delay unless 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”.

10.18. The NPPF explains that there are three dimensions to sustainable development, and these are:

- Economic;
- Social; and
- Environmental.

10.19. Whilst it is important to recognise that these three dimensions are not a checklist, they do provide a useful tool in contemplating the breadth of sustainability considerations to be weighed in the planning balance. It is considered that the proposals reflect all three dimensions and thus represent sustainable development. As explained below the proposals will secure significant benefits which must be weighed in the planning balance.

Economic

10.20. In respect of economic matters, benefits created by the scheme are set out in detail in the Economic Benefits Assessment (**CDA.24**) submitted with the application, and are summarised in the infographic below. These benefits should be given significant weight in the planning balance, especially as they will assist in addressing the significant adverse local economic impacts caused by the chronic under-delivery of housing:

P20-3154

ECONOMIC BENEFITS

375 HOMES AT LAND EAST OF NEWGATE LANE EAST

Pegasus
Group

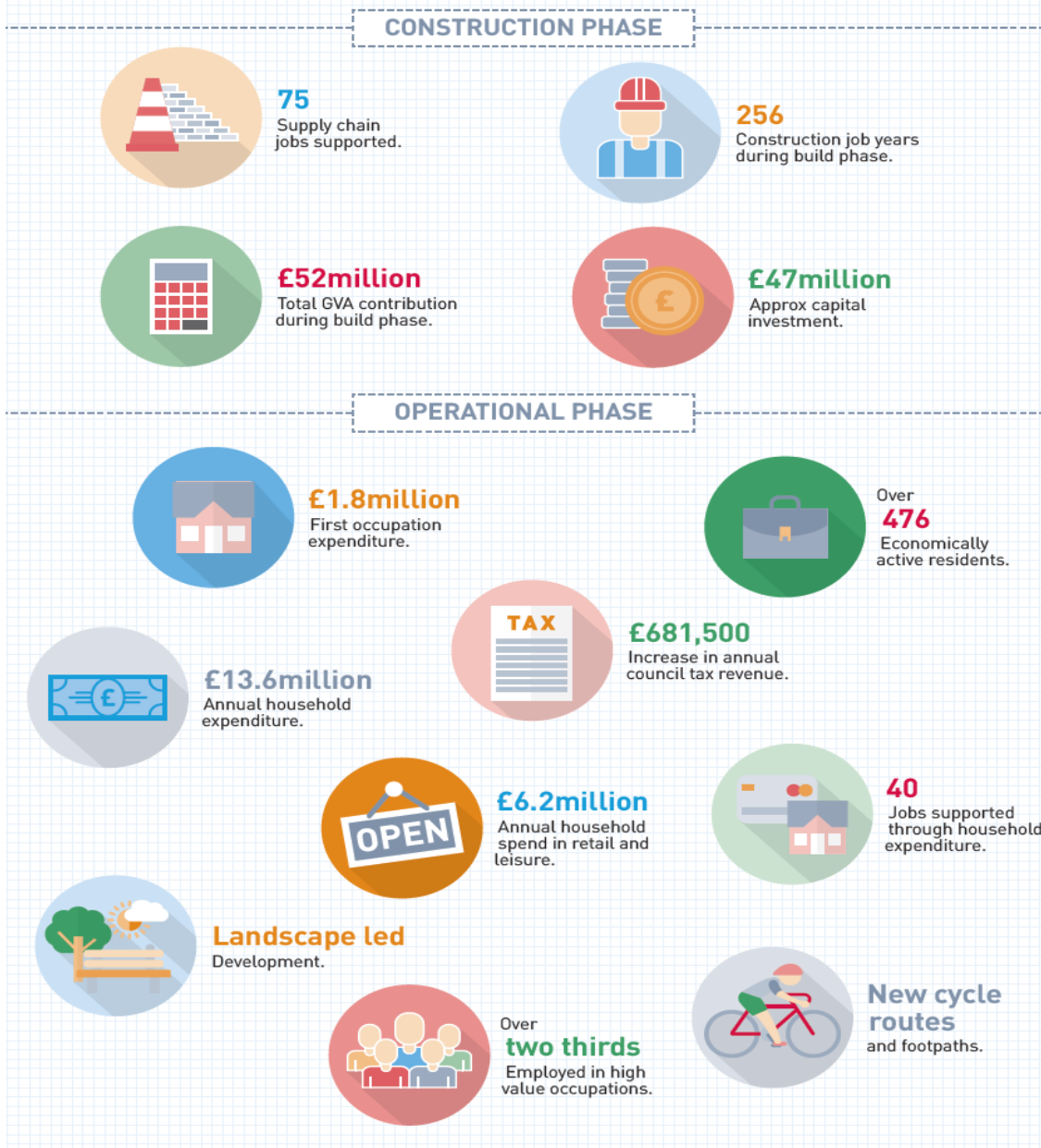


Figure 10 – Economic Benefits Infographic

Social

- 10.21. The development will provide a mix of housing types and sizes, meeting the needs of the local population.
- 10.22. Substantial weight must be given to the provision of housing both per se and in the light of the authority's current housing land supply, and the extent of the undersupply. This has been agreed by the main parties in the Planning SoCG.

- 10.23. Substantial weight must also be given to the provision of affordable housing in light of the chronic historic under-delivery of affordable housing in the borough. This constitutes a very significant benefit in terms of paragraph 11 of the NPPF.
- 10.24. The proposals also include significant areas of public open space and children's play area which provide places for recreation, play and walking, and help contribute towards wider development plan objectives to support healthy communities. This should be afforded moderate weight.

Environmental

- 10.25. In terms of the environmental role, the development of greenfield land will typically have some adverse impacts, no matter how sustainably located that site is.
- 10.26. In this case, the proposals will result in a small loss of agricultural land; however, this has been assessed as carrying very limited weight.
- 10.27. The appeal site is not subject to any landscape designation, and as described in Mr Atkin's evidence on which I rely, the appeal site is very well contained. As such, he considers that any potential landscape impacts will be highly localised and limited to a small pocket of the local landscape and to a small number of visual receptors. I nonetheless accept Mr Atkin's evidence that on completion the development will have a moderate to major adverse landscape impact, and that this will reduce to a moderate adverse impact in Year 15. Mr Atkin does not regard this impact as significant in the longer term,.
- 10.28. Turning to the impact of the development on the integrity of the strategic gap, Mr Atkin notes that the Gap Study refers to this part of the Strategic Gap as "minimum functioning" and "weak". The appeal proposal does not materially extend any further west than the approved development to the south, such that Peel Common will continue to be understood as a small isolated ribbon development within the Gap. Mr Atkin considers that, with regard to the *"more important core part of the Gap which separates Fareham and Stubbington, the appeal site has no role in the function of that gap and the appeal proposals will have no impact upon it."* He also regards the route of Newgate Lane East as representing *"a logical and robust physical boundary to the Strategic Gap at the local level"*. For these reasons, the integrity of the Strategic Gap is not affected by the development, individually or cumulatively.
- 10.29. The site has been the subject of ecological surveys and the key ecological features, primarily important hedgerows and trees, are proposed to be retained. The development will introduce significant areas of public open space and new trees and vegetation alongside water features that serve as part of the sustainable drainage system.
- 10.30. The Appellants are committed to enhancement measures and the Biodiversity Net Gain Assessment submitted with the planning application demonstrates that an overall net positive effect will be achieved. These improvements will result in a moderate ecological benefit to the site.
- 10.31. In terms of the effect on designated sites, the shadow HRA submitted with the application demonstrates that, with appropriate mitigation, the proposals will result in no adverse effects, which would weigh as neutral in the planning balance. The proposals will not adversely impact upon local hydrology or air quality, and mitigation payments will be secured in respect of the potential increased recreational use of designated sites.

- 10.32. The dwellings will be designed to reduce overall energy and carbon dioxide emissions by reducing energy consumption through design, orientation, lighting, heating requirements and air tightness, including low energy appliances and heating systems.
- 10.33. Furthermore, the appellants are also willing to commit to all dwellings being designed with water efficiency measures to seek to meet the government's optional standards requirement of no more than 110 litres per person per day usage, as well as the provision of electric vehicle charging points. Such design measures would result in minor environmental benefits.
- 10.34. The table below summarises the benefits and adverse impacts of the proposals.

Table 3 – Benefits and Adverse Impacts

Economic	
Increased local household spending	Substantial Benefit
Construction and supply chain jobs supported	Substantial Benefit
Role of housebuilding in supporting the post-Brexit and post-COVID economy	Substantial Benefit
Jobs supported through household expenditure	Moderate Benefit
Community Infrastructure Levy contribution	Neutral impact
Social	
Provision of new housing in light of current housing land supply / HDT position	Substantial Benefit
Provision of on-site affordable housing	Substantial Benefit
Provision of on-site open space for play, walking and recreation	Moderate Benefit
Increased use of local facilities	Moderate Benefit
Environmental	
High quality landscape-led scheme design	Substantial Benefit
Improvement to Newgate Lane East / Newgate Lane junction	Moderate Benefit
Delay to flow of traffic on Newgate Lane East from new roundabout junction	Minor Adverse Impact
Effect on Designated Sites	Neutral impact
On-site retention and enhancement of landscape features	Moderate Benefit
On-site biodiversity mitigation and enhancement to deliver Biodiversity Net Gain	Moderate Benefit

Commitment to sustainable design	Minor Benefit
Landscape and visual impact – Year 1 (completion) to Year 15	Major to Moderate, reducing to Moderate, Adverse Impact
Impact on Strategic Gap	Neutral impact
Loss of agricultural land	Very Minor Adverse Impact

10.35. The three dimensions of sustainable development have been assessed and it is concluded that not only do the adverse impacts not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, but the benefits significantly outweigh any harm, and planning permission should be granted accordingly.

11. Conditions, CIL and Planning Obligations

- 11.1. Policy CS20 requires development to provide or contribute towards infrastructure and any necessary mitigation measures through conditions, Community Infrastructure Levy (CIL) or legal agreement.

Conditions

- 11.2. Draft conditions are appended to the Planning SoCG. They have been discussed with FBC, HCC and other relevant parties and have been agreed between the main parties.

Community Infrastructure Levy

- 11.3. The Planning Obligations Supplementary Planning Document for the Borough of Fareham (April 2016) sets out the Council's process for securing planning obligations through the CIL and Section 106 Agreements.
- 11.4. FBC adopted its CIL Charging Schedule in April 2013. The charge for all Class C3 (residential) development excluding Welbourne is £105 per sqm (index linked).
- 11.5. The CIL payment will be used to fund local infrastructure and services as directed by the Council.
- 11.6. As described at para. 9.154 above, the Appellants are willing to pay a contribution towards education, but they believe that the justification for the contribution provided by the LEA does not comply with Regulation 122 of the CIL Regulations.

Section 106 Agreements

- 11.7. Draft Unilateral Undertakings are to be submitted to PINS with the Core Documents list, Proofs of Evidence and Statements of Common Ground. There are two Unilateral Undertakings – a main Principal Unilateral Undertaking covering Highways, TRO, School Travel Plan and Education contributions; Highways Works; Affordable Housing, Environmental, Open Space, and Birds Conservation Area obligations; and a separate Wintering Birds Mitigation Unilateral Undertaking. Both are submitted as unsigned but agreed drafts for the Inspector's consideration.

12. Summary and Conclusions

- 12.1. This Planning Proof of Evidence has been produced to assist the Inspector in his consideration of the planning issues arising in the appeal at Land East of Newgate Lane East for the proposed development of up to 375 dwellings.
- 12.2. The appeal site forms the central and northern portions of land that was proposed to be allocated for about 475 dwellings in the Fareham Draft Local Plan 2036 (Regulation 18, published in December 2017, **CDF.1**) under allocation HA2 'Newgate Lane South'. The plan proposed that the strategic gap boundary be moved to the western boundary of the allocation. The policy was accompanied by a Draft Development Framework plan which illustrated design principles for the site's development.
- 12.3. As a result, the Appellants commissioned the preparation of a Development Framework Document which was the subject of dialogue with planning, urban design and transport officers of the Council in the 2018–2020 period – this built on the general design principles described by the Council's plan, and was intended to be the basis for the preparation of planning applications to deliver the development
- 12.4. In the context of this positive collaborative working, Bargate Homes submitted an outline application for the southern part of the HA2 site in November, 2019, proposing the development of up to 99 homes. The application was due to be reported to the Council's Planning Committee in June, 2020 with an expected recommendation for approval, but officers then communicated a change in the Council's position such that the application could no longer be supported, leaving Bargate Homes to appeal against the application's non-determination.
- 12.5. Site HA2 remained a draft development allocation until the Council published its Regulation 19 Publication Local Plan in November, 2020. This draft plan based its housing target on the Government's consultation on a draft revised Standard Method which, if confirmed, would have lowered the Council's annual housing requirement. The revised Standard Method was not subsequently introduced by the Government, leading the Council to publish a further Revised Publication Local Plan in June, 2021.
- 12.6. In July, 2021, Bargate's non-determination appeal was allowed, granting planning permission for the development of up to 99 dwellings on the southern part of the former HA2 site. Representations on the Revised Publication Plan were submitted to the Council on the Appellants' behalfs in July 2021, highlighting this significant change in circumstances and encouraging the Council to re-allocate Site HA2 given that an Inspector had described the southern part of the site as a sustainable and suitable location for housing but the Council showed no intention of doing so. The Appellants therefore took the decision in autumn 2021 to prepare the outline planning application which is now the subject of this non-determination appeal.
- 12.7. The Council resolved that it would have refused permission for fourteen putative reasons after the appeal had been submitted. Subject to the completion of the draft Unilateral Undertakings and the imposition of appropriate conditions, ten of those reasons have been overcome at the time of writing.
- 12.8. The proposed development represents sustainable development providing much needed housing, including affordable housing, within Fareham borough, which will make a valuable

contribution towards addressing the persistent and chronic shortfall in housing land supply in the borough, as described by Mr Tiley's evidence.

- 12.9. It is accepted that the proposed development would change the nature of the site from fields to residential – Mr Atkin assesses the landscape impact of the development as “major to moderate” in Year 1, reducing to “moderate” in Year 15. However, this is an inevitable consequence of any greenfield development, and Mr Atkin describes this impact as highly localised, given the site's containment. Mr Atkin describes the landscape-led approach to the design of the proposed masterplan which will minimise the scheme's impact. In particular, the retained western field and substantial landscape buffer along the western edge of the site will soften the edge of the development and ensure adverse impacts upon the countryside and strategic gap are minimised through sympathetic design.
- 12.10. The Council's 2020 Gap Study describes this part of the Strategic Gap as 'minimum functioning and weak'. Mr Atkin assesses the impact of the appeal proposals on the integrity of the Strategic Gap and he concludes that the alignment of Newgate Lane East is “a logical and robust physical boundary” on which to base the re-definition of this edge of the Strategic Gap. I note that the Council came to a similar conclusion in its 2017 Housing Sites Selection Background Paper which informed the Reg. 18 Plan.
- 12.11. Furthermore, now that development of the southern part of the former HA2 draft allocation has been granted planning permission and is to proceed, and that it has been confirmed by that Inspector that development of that site will not individually or cumulatively significantly harm the integrity of the Strategic Gap, it would be entirely consistent for the same conclusion to be reached in this case, given the inter-relationship between these two land parcels.
- 12.12. When the appeal proposals are viewed comprehensively with the approved development to the south, they form a logical and continuous westward extension of Bridgemark / Woodcot, which will effectively complete the extent of residential development to the east of Newgate Lane East.
- 12.13. The starting point for assessing the principle of the proposed development is consistency with the development plan. The Council cannot demonstrate a 5 year housing land supply, and in these circumstances Policy DSP40 is the operative policy. The Appellants consider the proposals to fulfil the criteria in DSP40 in full and, as that policy acts as an exception to the restrictive policies CS14, CS22 and DSP6, the proposals are, consequently, in compliance with the development plan, taken as a whole. As such, paragraph 11(c) of the NPPF is engaged and the proposals should be permitted 'without delay'.
- 12.14. However, the 'most important policies for determining the application' are not up-to-date because they are predicated on an out-of-date assessment of housing needs, in accordance with the principles established through the Supreme Court judgement in Hopkins Homes/Suffolk Coastal (**CDK.1**). The Council has failed the Housing Delivery Test, and it also cannot demonstrate a five year housing land supply. Failure of one of those tests engages the 'presumption in favour of sustainable development' (the tilted balance) set out in NPPF paragraph 11(d) by reason of Footnote 8. Accordingly, the weight to be given to any breach of these out-of-date policies within the assessment of the 'tilted balance' is reduced accordingly.

- 12.15. The application of the tilted balance allows development to be approved without delay unless its adverse impacts would significantly and demonstrably outweigh its benefits. I have assessed the scheme against the three dimensions of sustainable development – economic, social and environmental – and concluded that not only do the adverse impacts not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, but the benefits significantly outweigh any harm. Moreover, as cited by Mr Tiley, the harmful local social and economic impacts of the persistent under-supply of housing in the borough have been significant, lending increased weight to the urgent need to improve housing delivery.
- 12.16. I therefore respectfully request that the appeal be allowed, subject to imposition of suitably worded conditions and the completion of the related S106 Agreements.

Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

Solent

3 West Links, Tollgate, Chandlers Ford,
Eastleigh, Hampshire, SO53 3TG
T 023 8254 2777
E Solent@pegasusgroup.co.uk
Offices throughout the UK & Ireland

Expertly Done.

DESIGN | ECONOMICS | ENVIRONMENT | HERITAGE | LAND & PROPERTY | PLANNING | TRANSPORT & INFRASTRUCTURE



All paper sources from sustainably managed forests

Pegasus Group is a trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

Registered office: Querns Business Centre, Whitworth Road, Cirencester, Gloucestershire, GL7 1RT
We are ISO certified 9001, 14001, 45001



Pegasus_Group



pegasusgroup



Pegasus_Group

PEGASUSGROUP.CO.UK