

**PLANNING,
REGENERATION
+ INFRASTRUCTURE**

ALEX ROBERTS

**HOUSING NEED
AND SUPPLY
REBUTTAL
PROOF OF
EVIDENCE**

Land East of Newgate Lane East,
Fareham
Appeal Ref.
APP/A1720W/22/3299739s

Rebuttal Proof of Evidence
Housing Need and Supply

Fareham Borough Council
September 2022

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1.0 SCOPE OF REBUTTAL EVIDENCE

1.1 Scope of this Evidence

1.1.1 I have been instructed by the Council to prepare a rebuttal proof of evidence, in response to the housing need and supply evidence prepared by Neil Tiley on behalf of the Appellant.

1.1.2 I confirm that this evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I also confirm that the opinions expressed are my true and professional opinions.

A handwritten signature in dark ink, appearing to read 'A Roberts', is centered within a light gray rectangular box.

Signed:

Alex Roberts, Director, Lambert Smith Hampton
27 September 2022

2.0 INTRODUCTION

2.1 Overview

- 2.1.1 The evidence prepared by Mr Tiley covers 10 sections, plus an appendix detailing the Appellant's position on 5YHLS. My rebuttal is focussed on the 10 sections of his proof of evidence. Whilst all of Mr Tiley's evidence has not been responded to, it does not indicate that the Council is in agreement with all of the document.
- 2.1.2 There is no need for me to address Mr Tiley's Appendix 1. The Statement of Common Ground (SoCG) (CDL.4) signed off by Mr Tiley, at paragraph 2.12, agrees that the 5YHLS range is between 3.86 and 4.88 years and that the weight to be afforded to the delivery of housing should be substantial at any point within that range. Both parties also agree that it is not necessary to test 5YHLS evidence at a round table session.
- 2.1.3 My evidence is split into the following four sections, to address points raised by Mr Tiley.
- The weight to be afforded to the provision of housing
 - The weight to be afforded development plan policies
 - Progress of the Local Plan examination
 - Comments on other sections

3.0 THE WEIGHT TO BE AFFORDED TO THE PROVISION OF HOUSING

- 3.1.1 Section 9 of Mr Tiley's proof considers the weight to be afforded to the provision of housing in other appeal decisions.
- 3.1.2 As set out in the SoCG (CDL.4), paragraph 2.12, it is agreed that the weight to be afforded to the delivery of housing should be substantial. The signed SoCG does not differentiate between market and affordable housing.
- 3.1.3 **Paragraph 9.2 and table 9.1** of Mr Tiley's proof summarises the weight afforded by the Secretary of State to the provision of housing. I note that, in 160 Stanley Road, Stockport, the SoS brings together affordable housing provision and delivery of housing and a housing supply of 2.8 years and gives very significant benefit to housing overall (Table 9.1).
- 3.1.4 **Paragraph 9.5** – considers instances where the SoS gives weight specifically to affordable housing. In the summary of SoS decisions in table 9.1, subject to the correction above for 160 Stanley Road decision, weight is given to both market housing and affordable housing separately and in an inconsistent basis by the SoS. In all examples, apart from 1, the same weight is afforded for both market and affordable housing. I do note however, that there are more instances of market and affordable housing being split when the LPA can demonstrate a 5YHLS of more than 5 years. No rationale is given in the SoS letters for this.
- 3.1.5 **Paragraph 9.6 and table 9.2** – perform a similar function to the above paragraph and tables and look instead at appeal decisions in Fareham Borough. In all but two of the appeal decisions listed by Mr Tiley, the weight afforded to market and affordable housing is the same and is combined. Furthermore in most appeal decisions, the housing land supply shortfall was given as a range. I consider below the two decisions in which Mr Tiley considers Inspectors have given separate weight to market and affordable housing.
- 3.1.6 Firstly, Land to the South of Funtley Road (CDJ.6), at paragraph 90, the Inspector states:
Irrespective of their differences as to the actual numbers, the main parties agree that the shortfall in supply of new homes is significant and the weight to be attached to the delivery of housing from the appeal scheme would also be significant. Up to 125 new homes would therefore be a significant benefit in meeting a need for new housing. This would be enhanced by up to fifty of them being provided as affordable homes. Although there is a duty on the Council in regard of self-or custom build provision, the six custom or self-build plots would nevertheless also be a benefit.
- 3.1.7 On a plain reading of this paragraph, the inspector is 'enhancing' the significant benefit he affords to the delivery of 125 new homes. It is that benefit which is being enhanced, he is not providing for an additional 'enhanced' above significant benefits for the provision of 50 affordable homes.
- 3.1.8 In the second appeal, Land at Newgate Lane (North / South) (CDJ.7), at paragraph 113, the inspector states:
In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide

employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight...

3.1.9 Affordable and market housing are not disaggregated in this decision when considering the benefits, substantial weight is afforded to the delivery of housing in general. I note paragraph 97 of the decision letter, which states:

40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.

3.1.10 From reading this sentence, which precedes paragraph 113, affordable housing benefits attract substantial weight, but this conclusion is reached by attributing some benefit to Bargate Homes reinvesting into Vivid's affordable housing programme. When the Inspector applies the planning balance in 113, market and affordable housing are brought together.

3.1.11 In a very recent appeal decision at North Wallington, Wallington (CDJ.32), decision date 21 September 2022, at paragraph 51, the Inspector identifies social benefits from the contribution to the housing land supply, and then goes on to say that great weight is attributed to these benefits, including affordable housing. No separate weight is given to the delivery of affordable housing.

3.1.12 In a second very recent appeal decision at Land to the East of Cartwright Drive (CDJ.33), decision date 23 September 2022, the Inspector, at paragraph 46 identifies significant social benefits from the provision of 49 new homes.

3.1.13 Therefore, in respect of the weight afforded to market and affordable housing by Inspectors in Fareham no Inspectors attribute weight to both market and affordable housing separately, in their decision letters.

3.1.14 The weight to be afforded to housing in Fareham, is agreed by both parties, as being substantial. This is the same, or similar weight to that arrived at by Inspectors, where the provision of affordable housing was policy compliant.

3.1.15 In summary, the Secretary of State appears to be inconsistent: sometimes providing weight to housing overall and sometimes weight to market housing and affordable housing separately. Although weight is more commonly split when a 5YHLS can be demonstrated. Inspectors in Fareham, have been consistent in affording weight to affordable housing within the weight afforded to housing overall.

4.0 WEIGHT TO BE AFFORDED DEVELOPMENT PLAN POLICIES

4.1.1 The weight to be given to Policy DSP40 generally is set out in the Council's Planning Proof of Evidence and Rebuttal. These demonstrate that DSP40 is given full or great weight where a housing land supply shortfall exists.

4.1.2 **Paragraph 6.5** of Mr Tiley's proof, states that:

4.1.3 *Rather strangely however, paragraph 9.3 of the LPA's Statement of Case suggests that notwithstanding that the most important policies are out-of-date owing to the fact that they have been ineffective in delivering the number of homes needed to provide for sustainable development by a substantial margin, they should nevertheless be afforded very substantial weight.* This paragraph 6.5 of Mr Tiley's proof appears in the context of the Council failing to pass the Housing Delivery Test (HDT) from the 2021 results (published in January 2022), with the implication that despite Inspectors affording great weight to DSP40 in the past, that this should be different because of the HDT result. However, Mr Tiley does not clearly set out why it would be wrong to give policy DSP0 the same level of weight in this appeal as other Inspectors have done in Fareham. Paragraph 6.5 merely states that:

The most important policies are out-of-date owing to the fact that they have been ineffective in delivering the number of homes needed to provide for sustainable development by a substantial margin.

4.2 DSP40 is Engaged by a lack of 5YHLS

4.2.1 Policy DSP40 is engaged by the lack of a 5YHLS, and it is the most important policy because it addresses how the planning balance exercise should be carried out in a plan led way. All other appeal Inspectors have recognised this, and have afforded DSP40 full weight, great weight, or significant weight in those decisions. Mr Jupp has considered this in his evidence, at paragraphs 7.2 – 7.34. Below I set out some of these appeal decisions, including a recent decision not available at the time Mr Tiley prepared his evidence.

4.2.2 **At table 9.2** of his evidence Mr Tiley provides a list of appeal decisions in Fareham. All these appeal decisions were made within the context of the Council being unable to demonstrate a 5YHLS.

4.2.3 At paragraph 46 of Land East of Newgate Lane (CDJ 1), the Inspector affords criteria (i) and (ii) of DSP40 greater weight.

4.2.4 At the Posbrook Inquiry, published in February 2022 (CDJ 4) the Inspector, at paragraph 110, identified that DSP40 *also accords generally with the housing delivery expectations of Framework policy*. The Inspector goes on to conclude at paragraph 117:

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

4.2.5 At Funtley Road (CDJ 6), published in May 2022, the Inspector concluded at paragraph 84 that:

I am mindful of how other Inspectors have treated LS2 Policy DSP40 in their decisions. I note the appellants' contention that the policy is out of date as they consider that its not worked given the ongoing shortfall of housing sites. However, it is designed to provide a contingency approach to providing housing when a five year supply cannot be met. It is clear from recent decisions that in some cases, including the 55-unit scheme, it has enabled housing sites to come forward that may otherwise not have. Consequently, the policy still carries weight.

4.2.6 As the Inspector clearly states, previous appeal decisions have been considered in reaching this conclusion.

4.2.7 At Newgate Lane North and South, from June 2021 (CDJ 7), the Inspector stated at paragraph 107 that:

LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865

4.2.8 At paragraphs 108, 109, 110 and 111 the Inspector concludes that DSP40 accords with the aims of the Framework and that the various criteria within DSP40 can be afforded considerable weight and the greatest weight.

4.2.9 At Eversdown Farm, from June 2022 (CDJ 9) the Inspector also attributes substantial weight to policy DSP40. [paragraph 55] *However, as it is specifically engaged in scenarios where there is unmet housing need, the conflict with Policy DSP40 carries substantial weight. This approach accords with a number of previous appeal decisions*

4.2.10 Again, as with Funtley Road, the Eversdown Farm inspector has considered a number of other previous appeal decisions and reached a similar conclusion.

4.2.1 At North Wallington, Wallington (CDJ.32), paragraphs 9,18 and 53, the Inspector recognises that DSP40 is the most important policy, and although out of date, the weight afforded to the breach of DSP40 (ii) is determinative.

4.2.2 At Land to the East of Cartwright Drive (CDJ.33), paragraph 10, the inspector identifies DSP40 as being there to specifically address the issue of permitting sites beyond settlement boundaries when there is a shortfall of 5YHLS, the inspector recognises it is necessary to consider whether the proposal meets the criteria. Again at paragraph 45, the inspector recognises DSP40 is engaged.

4.2.3 Past appeal Inspectors have been consistent in their approach to the weight that is afforded to Policy DSP40. The role of DSP40 is acknowledged by Inspectors, in the appeals referred to above, it is there as contingency when there is no demonstrable 5YHLS, the policy is flexible and seeks to safeguard housing delivery by

making provision for additional, non-allocated housing sites, subject to the application of criteria in the policy.

4.3 The role DSP40 provides for in sustainable development

4.3.1 **At paragraph 6.5** - the Appellant claims that policies [including DSP40] have been wholly ineffective in providing for sustainable development by a substantial margin and that it would be wrong to give DSP0 full or great weight. As this paragraph is within Mr Tiley's section 6, which concerns the Housing Delivery Test in Fareham, it presumably relies on the HDT result being below 75%, as a determining factor. This assertion by the appellant is misconceived for several reasons.

4.3.2 Firstly, it is important to establish that the HDT was first below 75% from the HDT 2021, published in January 2022. Therefore, all applications to the Council and appeals heard, from January 2022 will have been determined in the context that the HDT is below 75%. From those appeals listed above, this includes the Posbrook Inquiry (CDJ 4), Funtley Road (CDJ 6), Eysersdown Farm (CDJ 9). Most recently in September in the North Wallington appeal (CD J.32), the Inspector dismissed the appeal as a result of conflict with DSP40(ii), stating in the process at paragraph 50:

Furthermore, on 14 January 2022, the Government published the 2021 Housing Delivery Test (HDT) results. The HDT results show that Fareham Borough Council has underdelivered against its housing requirement over the latest 3-year period. Consequently, noting the outcome of the HRA, the presumption in favour of sustainable development contained within paragraph 11d) of the Framework is engaged. On this basis, I have not found it necessary to come to a view on the appellants evidence on sites which they consider should be discounted from the supply.

4.3.3 In the recent Cartwright Drive decision (CDJ.33) the inspector dismissed the appeal as a result of conflict with DSP40(ii) and (iii), noting at paragraph 9 that:

...regardless of an assessment of the deliverability of sites in the SoCG, the Housing Delivery Test result for 2021 was 62% and substantially below the 75% housing requirement over the previous three years. In these circumstances, paragraph 11 d) of the Framework is engaged and the policies in the development plan referred to above that restrict development beyond settlement boundaries must be considered to be out-of-date.

4.3.4 These appeal decisions still identified DSP40 as the most important policy and gave it great, or full weight.

4.3.5 Secondly, policy DSP40 provides a plan led mechanism to determine and permit residential applications outside of the settlement boundaries in Fareham. This allows housing development to come forward where otherwise the established settlement boundary would have precluded this. This accords with paragraph 15 of the NPPF; *The planning system should be genuinely plan-led.*

- 4.3.6 DSP40 contains a series of decision-making criteria to weigh the relevant parts of the Development Plan, to enable more homes to be delivered, but to strike a balance with other important considerations. It follows that logically it should still be given full, or great weight where the HDT result is below 75%, and a 5YHLS cannot be demonstrated. It makes provision for the delivery of housing in areas of Fareham which otherwise would conflict with the development plan.
- 4.3.7 Thirdly, it is not the criteria, or plan-led approach in DSP40 which has been ineffective in delivering the number of new homes needed to provide for sustainable development. It is the series of failures, that I identified within my proof of evidence, at paragraphs 4.4.1 to 4.4.7, and also detailed in the Council’s July 2022 Housing Supply Topic Paper (CDF.9), within section 4, paragraph 4.7. In short, this is the impact of Nutrient Neutrality and Covid-19.
- 4.3.8 This plainly concludes that it is for these reasons the HDT result has gone below 75%, and that it is misconceived for Mr Tiley to assert that the HDT result of less than 75% means that less weight should be afforded to policy DSP40.
- 4.3.9 The fact that Mr Tiley is incorrect to assert that DSP40 has been ineffective and thus that conflict with it should be given less weight is also demonstrated through the application of DSP40 by the Council and Inspectors throughout the period during which the Council could not demonstrate a 5YHLS and in particular since January 2022 when the HDT was below 75%. As I set out in my Proof of Evidence, in the table at paragraph 4.4.6, since 2020/21, once the nitrates issue has been resolved, the number of consents has significantly increased in Fareham. It is also notable that the Council’s position on 5YHLS has improved since 2020/21. Table 1 below shows the change in the Council’s position over this time.

Table 1. 5YHLS Track Record

Publication date	5YHLS position (years)
December 2017	3.62
March 2018	4.39
June 2018	4.65
September 2018	4.29
October 2018	4.95
December 2018	4.95
January 2019	4.5
April 2019	4.66
June 2020	4.03
February 2021	4.2
January 2022	4.31
May 2022	5.08
June 2022	4.95 (conceded to 4.88 through appeals – see para 2.14 of the PoE)

- 4.3.10 The range of shortfall has risen and fallen in line with the nitrate issue affecting the issuing of planning permissions. The initial agreement to address the nitrate issue was signed by the Council in September

2020, and it is clear from the above table that since that time there has been a steady rise in the housing land supply position.

4.3.11 The number of sites permitted by the Council, or on appeal by Inspectors, where policy DSP40 has clearly been applied, is shown in the table(s) below.

4.3.12 Collectively this shows that, now that the nitrate issue has been resolved, the shortfall in the 5YHLS is decreasing as a result of the proper application of DSP40, this will then translate into an increase in the number of completions, improving the HDT results to above 75%. This is shown within table 2 of July 2022 Housing Supply Topic Paper (CDF.9).

Table 2. Examples of Major Outline, or Full Applications permitted by the Council where DSP40 is complied with

Reference	Address	Decision	Decision Date	Net Number of Dwgs	DSP40 Compliant – Officer/Committee Report
P/18/0897/FP	Land SE of Segensworth Road Roundabout	Committee Approval	13/12/2018	75	Para 9.53 in Planning Balance confirms compliance
P/18/0068/OA	Land East of Southampton Road	Committee Approval	16/07/2020	105	Res to Grant at Dec 2018 Committee - Para 8.55 in Planning Balance confirms compliance
P/18/0107/OA	Land E & W of 79 Greenaway Lane, Warsash	Committee Approval	20/01/2021	30	Res to Grant at Oct 2018 Committee - Planning Balance confirms compliance
P/17/0752/OA	Land East of Brook Lane, Warsash	Committee Approval	17/02/2021	140	Res to Grant at Oct 2018 Committee - Planning Balance confirms compliance
P/18/0654/FP	Land W of Seafield Rd and Moraunt Drive, Portchester	Committee Approval	07/05/2021	48	Res to Grant at Dec 2018 Committee – Para 8.87 in Planning Balance confirms compliance
P/18/0484/FP	Land SW of Sovereign Crescent, Locks Heath	Committee Approval	08/07/2021	38	Res to Grant at Sept 2018 Committee – Planning Balance confirms compliance
P/19/0483/FP	The Grange, Oakcroft Lane, Stubbington	Committee Approval	23/08/2021	8	Para 8.69 in Planning Balance confirms compliance
P/20/0418/OA	The Grange, Oakcroft Lane, Stubbington	Committee Approval	23/08/2021	15	Para 8.5 (error in report – should be 8.81) in Planning Balance confirms compliance
P/18/1258/FP	Land at Beacon Bottom, Park Gate	Committee Approval	18/10/2021	29	Para 8.82 in Planning Balance confirms compliance
P/19/0643/FP	69 Botley Road	Committee Approval	17/11/2021	11	Para 8.74 in Planning Balance confirms compliance

Source: Council decision lists since 2018

Table 3. Appeals Determined by Planning Inspectors where DSP40 is applied

Planning App	App. Dwelling Nos.	Site Address	Link to Appeal Decision & Core Doc Reference	Relevant Paragraphs where DSP40 is discussed	Appeal Decision
P/17/0681/OA	Up to 150	Land East of Posbrook Lane, Titchfield	Heading 9 (fareham.gov.uk) CDJ.27	Para 17, 66, 68	Dismissed
P/17/0895/OA	Up to 46	Land off Sopwith Way	Heading 9 (fareham.gov.uk) CDJ.34	Para 15, 20, 24, 27, 35	Dismissed
P/17/1415/OA	Up to 160	Land West of Old Street Stubbington Fareham	GetFile.aspx (fareham.gov.uk) CDJ.28	Para 12, 39	Dismissed
P/18/0005/OA	Up to 350	Land to East of Down End Road Fareham	Heading 9 (fareham.gov.uk) CDJ.3	Para 80,97	Dismissed
P/18/0263/OA	Up to 16	The Grange, Oakcroft Lane	Heading 9 (fareham.gov.uk) CDJ.35	Para 25, 26, 27, 33, 35, 45	Dismissed
P/18/0363/OA	Up to 28	84 Fareham Park Road	Heading 9 (fareham.gov.uk) CDJ.10	Para 11, 17, 19, 27, 32	Dismissed
P/18/0482/OA	Up to 100	Land adj to 125 Greenaway Lane, Warsash	Heading 9 (fareham.gov.uk) CDJ.36	Para 26, 35	Dismissed
P/18/0756/OA	Up to 28	Land between 56-66 Greenaway Lane, Warsash	Heading 9 (fareham.gov.uk) CDJ.37	Para 19, 27, 28, 31	Allowed
P/18/1073/FP	225	Land South of Romsey Ave	Heading 9 (fareham.gov.uk) CDJ.8	Para 34, 111, 116, 165	Allowed
P/19/1193/OA	Up to 57	Land east of Posbrook Lane	Heading 9 (fareham.gov.uk) CDJ.4	Para 60, 62, 109, 110, 111, 115, 117, 118	Allowed
P/19/1260/OA	Up to 99	Land east of Newgate Lane	Heading 9 (fareham.gov.uk) CDJ.1	Para 12,13,14, 15,16, 24, 25, 26, 27, 28, 29, 30, 33, 34, 44, 46	Allowed
P/20/0506/OA	Up to 38	Land at Eversdown Farm	Heading 9 (fareham.gov.uk) CDJ.9	Para 16, 24, 30, 49, 51, 55, 56,	Allowed
P/20/0522/FP	206	Land east of Crofton Cemetery and west of Peak Lane	Heading 9 (fareham.gov.uk) CDJ.2	Para 11, 16, 17, 31, 45, 48, 70, 84	Allowed
P/20/1168/OA	Up to 125	Land to the South of Funtley Road	Heading 9 (fareham.gov.uk) CDJ.6	Para 32, 50, 58, 65, 67, 68, 84, 85, 86, 87, 88	Allowed
P/19/0460/OA	Up to 75	Land at Newgate Lane (South)	Heading 9 (fareham.gov.uk) CDJ.7	Para 15, 16, 19, 20, 21, 22, 38, 54, 55, 56, 57, 72, 77, 84,	Dismissed
P/18/1118/OA	Up to 75	Land at Newgate Lane (North)	Heading 9 (fareham.gov.uk)	85, 86, 103, 107, 108 – 112, 115, 116	Dismissed

			CDJ.7		
P/19/0894/OA	32	Land east of North Wallington Road	Heading 9 (fareham.gov.uk) CDJ.32	Para 9, 18	Dismissed
P/21/1707/OA	49	Land east of Cartwright Drive	Heading 9 (fareham.gov.uk) CDJ.33	Paras 10, 21, 26, 33, 34, 42, 45	Dismissed

Source: Planning Inspector Decisions

- 4.3.13 Of the 18 appeal decisions above, 9 were dismissed owing to an identified conflict with Policy DSP40. The remaining 2 dismissed decisions identified no conflict with DSP40. These were dismissed due to the lack of a viable means to address the nitrate issue (The Grange CDJ.35 and 125 Greenaway Lane CDJ.36). Both of these sites now benefit from planning permission.
- 4.3.14 It follows that, although the nitrate neutrality issue prevented permissions being granted and stalled the delivery of housing, this was not down to a failure of policy DSP40 and does not mean that it should be afforded any less weight.
- 4.3.15 Indeed, through the application of policy DSP40 the decision maker can foreshorten the time it takes to make a start on delivering residential permissions. The aim of DSP40 and its replacement, is for any proposal that comes forward to be delivered as soon as possible, to ensure the shortfall in the Council’s 5YHLS can be made up, contributing to completions if development does commence. The application of DSP40 in foreshortening permissions will continue to be particularly useful in returning the HDT results to 75% and above.
- 4.3.16 A further indication that Policy DSP40 should be given great or full weight is the fact that emerging policy HP4, which will supersede DSP40 upon adoption, contains very similar wording. The submission text for Policy HP4 (CDF.5 for Submission Local Plan) reads:
- If the Council cannot demonstrate a five-year supply of land for housing against the housing requirement set out in Policy H1, additional housing sites, outside the Urban Area boundary, will be permitted where they meet all of the following criteria:*
- a) *The proposal is relative in scale to the five-year housing land supply shortfall;*
 - b) *The proposal is sustainably located adjacent to, and well related to, the existing urban area boundaries, and can be integrated with the neighbouring settlement;*
 - c) *The proposal is sensitively designed to reflect the landscape character and setting of the settlement, is of a scale proportionate to its setting and recognises the intrinsic character and beauty of the countryside and, if relevant, does not significantly affect the integrity of a Strategic Gap;*
 - d) *It can be demonstrated that the proposal is deliverable in the short term; and*
The proposal would not have any unacceptable environmental amenity or traffic implications.

4.3.17 The Inspector has had to consider whether this policy is sound through the local plan examination, this was done during Matter 4 of the examination. In neither of the letters published by the Inspector following the hearings, has the inspector indicated this particular policy is un-sound and requires modification. The Council consider there is no reason to believe from the Inspector's two post hearing letters that MMs are to be proposed on this Policy. Therefore, the Inspector must consider, as stated at paragraph 35 of the NPPF that, this policy is:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs²¹; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

5.0 PROGRESS OF THE LOCAL PLAN EXAMINATION

- 5.1.1 **At paragraph 7.30**, Mr Tiley asserts that it is inconceivable that the LPR could be adopted before the Spring / Summer of 2023. Within my proof of evidence, at paragraphs 4.4.10 onwards, I set out the Council’s position on the Local Plan examination.
- 5.1.2 The adoption of the LPR, by Spring / Summer 2023 is entirely realistic and the Council considers that the LPR could be adopted before then. The Council does not consider the work listed by the Appellant as ‘significant’ nor would the language used by the Inspector infer that to be the case. The Inspector is keen to keep the examination process moving, in paragraph 18 of her September letter (CDF.13) requesting a timetable as soon as possible. The further action, identified in paragraph 13, of the same letter, does not suggest the Affordable Housing topic paper should be consulted on, prior to a Main Modifications consultation, this assertion is not supported by evidence.
- 5.1.3 The Appellant asserts that limited weight can be afforded to the emerging plan. But the points made by Mr Tiley within his proof have already been made to the Local Plan Inspector (see table 6 below). The LPR was submitted for examination in September 2021, with hearings held in March and April earlier this year. Since then, the Inspector has issued a letter with her main findings (June 2022 CDF.8) requesting a focused consultation on three topic papers relating to housing supply matters, and then issued a second Post Hearings letter (CDF.13) confirming her position on a number of matters and advising on the next steps to a main modification consultation. The table below sets out where the Appellant has made statements or submissions to the Local Plan examination process on matters raised in this appeal. The Inspector’s second letter (September 2022) comes after all of these submissions by the Appellant, and therefore can be concluded to have been considered by the Local Plan Inspector, and with the exception of work to be undertaken on affordable housing need and some minor points, the representations of the Appellant have not been accepted. Raising the same points again in this appeal cannot therefore reduce the weight given to the plan and specifically the Inspector’s findings on matters of housing supply and the stepped trajectory.

Table 4. Cross Reference of Appellant’s Evidence

Appellant’s proof of evidence section	Appellant’s matters statement cross-referenced
Housing requirement does not reflect need (para 3.6i)	Matter 2 statement – section 1.1 Matter 3 statement – section 1.1, 1.3, 1.6 Focused consultation response – paragraphs 2.21-2.25
Record of substantial under-delivery (para 3.6ii)	Matter 3 statement – section 1.8, 1.14. Matter 7, section 1.11 Focused consultation response – paragraphs 2.27-2.29
Absence of 5YHLS (para 3.6iii)	Matter 3 statement – section 1.8
Adopted policies will not restore 5YHLS (para 3.6iv)	Matter 3 statement – section 1.8. Matter 4 statement section 1.6 Focused consultation response – paragraphs 2.34-2.44
Substantial record of under-delivery in HDT (para 3.6v)	Matter 3 statement – section 1.8 Focused consultation response – paragraphs 2.26-2.23
Emerging plan will be out of date upon adoption (para 3.6v)	Matter 7, sections 1.8, 1.9, 1.11 Focused consultation response – paragraphs 2.34-2.44

5.1.4 The Local Plan examination is progressing, and undoubtedly will do during the timescales of this appeal. Therefore, the Council reserves the right to update its position on the Local Plan, and considers there is no evidence, or reason, to suggest why the Main Modification consultation could not take place before the end of 2022. The Council's Executive will consider papers relevant to the Local Plan examination, subject to a positive recommendation, these will then go to Full Council for approval to consult. Therefore as there is no evidence from the Local Plan Inspector that the overall housing provision in the plan needs to be increased, in line with the paragraph 48 of the Framework, and as stated in the Council's submissions to this appeal, the LPR is now at an advanced stage and accordingly substantial weight can be attached to the relevant policies within it.

6.0 COMMENTS ON OTHER SECTIONS OF APPELLANT PROOF

6.1 Section 5

6.1.1 The Council do not agree with the figures in the **Appellant's table 5.1**, page 18, and would instead use the figures presented in table 7 below as being accurate.

6.1.2 The Council consider that the Appellant has presented an over-simplification of the housing requirement and not referenced the trajectory in the adopted plan (Local Plan Part 2 DSP Appendix G Line J – ref CDE.2a and housing delivery from Local Plan Part 3 – Welborne Plan page Table 11.2). The completion data also differs from the published material, including the Council's Authority Monitoring Reports. When the correct requirement and completion data is used, as set out below, from the figures do not show a large cumulative shortfall as the Appellant suggests, in fact the position demonstrates a surplus of delivery against requirement across the plan period, until the adopted plan fell out of date in June 2020.

Table 5. Table G

Year	Housing req (from DSP)	Housing delivery Welborne plan	Cumulative housing reqt	Completions	Cumulative completions	Cumulative shortfall/surplu s
2006/07	340	0	340	608	598	258
2007/08	340	0	680	546	1144	464
2008/09	340	0	1020	318	1462	442
2009/10	340	0	1360	188	1650	290
2010/11	340	0	1700	339	1989	289
2011/12	252	0	1952	315	2304	352
2012/13	252	0	2204	391	2695	491
2013/14	252	0	2456	152	2847	391
2014/15	261	0	2717	285	3132	415
2015/16	261	0	2978	371	3503	525
2016/17	135	120	3233	349	3852	619
2017/18	135	180	3548	291	4143	595
2018/19	134	200	3882	290	4433	551
2019/20	125	320	4327	285	4718	391
2020/21	124	340	4791	117	4835	44

Source: Fareham Borough Council Land Use Monitoring / AMRs

6.1.3 **The Appellant's paragraphs 5.26 and 5.28** – refer to Business Register and Employment Survey (BRES) data, and it is suggested that there has been a significant reduction of between 2,001 and 3,999 jobs. Mr Tiley provides no reference to the documents where he obtained this information from. I however have looked at the BRES information and found his information to be incorrect and misleading.

6.1.4 Firstly, BRES data provides single figure outputs and not a range, therefore it is not clear why Mr Tiley has done this. Secondly, having looked at the BRES data from 2015 to 2020 for Fareham, it shows there was a loss of 2,800 jobs, not a range.

6.1.5 Mr Tiley then uses the figures from BRES over a period of 2015 to 2020 (from his paragraph 5.26) and then uses from to compare the census period of 2011 to 2021. Mr Tiley does not explain why he has not used

2011 as his start point. Using BRES data from 2011 to 2020 would have been appropriate for several reasons. Firstly, it covers the same, or similar period to the Census range. The period of 2015 to 2020 analysis looks at a 'peak' to a 'trough' of an economic market cycle, and is not robust, looking backwards it is preferable to look at a whole market cycle. It includes the Covid-19-year 2020, which has a reduction of around 2,000 jobs, which cannot be taken as a typical year. This has not been factored into Mr Tiley's assessment.

- 6.1.6 When looking across from 2011 to 2020, which could be seen as more of a 'trough' to 'trough' assessment, but also bearing in mind it includes the Covid-19 year of 2020, it shows an overall loss of 450 jobs, or 50 per annum.

Table 6. BRES DATA From 2011 to 2020 and Analysis

Industry	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2020	per annum	2015-2020	per annum
1:Agriculture, forestry & fishing (A)	450	450	450	500	500	450	500	225	250	250	-200	-22.2	-250	-50
2:Mining, quarrying & utilities (B,D and E)	450	300	450	600	300	225	350	300	350	250	-200	-22.2	-50	-10
3:Manufacturing (C)	4,500	5,000	4,500	4,500	5,000	4,000	4,000	5,000	5,000	4,500	0	0.0	-500	-100
4:Construction (F)	3,000	2,500	3,000	3,000	3,000	3,500	3,000	3,000	3,500	3,500	500	55.6	500	100
5:Motor trades (Part G)	1,250	900	900	1,000	1,000	1,000	1,250	1,500	1,500	1,250	0	0.0	250	50
6:Wholesale (Part G)	2,500	3,000	2,250	2,250	2,250	2,250	2,250	2,000	1,750	1,750	-750	-83.3	-500	-100
7:Retail (Part G)	5,000	5,000	5,000	5,000	5,000	4,500	4,500	4,500	4,500	4,500	-500	-55.6	-500	-100
8:Transport & storage (inc postal) (H)	3,000	3,000	3,000	3,000	3,000	3,500	3,000	3,000	3,000	3,000	0	0.0	0	0
9:Accommodation & food services (I)	3,000	3,000	3,500	3,500	3,000	2,500	3,000	3,000	3,000	3,000	0	0.0	0	0
10:Information & communication (J)	1,500	1,500	1,750	1,500	2,250	2,250	2,000	2,000	2,000	2,000	500	55.6	-250	-50
11:Financial & insurance (K)	1,500	1,500	1,750	1,500	1,500	1,250	1,500	1,250	1,000	900	-600	-66.7	-600	-120
12:Property (L)	600	700	500	700	800	900	800	600	700	900	300	33.3	100	20
13:Professional, scientific & technical (M)	3,500	4,000	3,000	3,500	3,500	4,000	3,000	4,000	4,000	4,000	500	55.6	500	100
14:Business administration & support services (N)	4,000	4,000	5,000	3,500	4,500	5,000	4,000	4,000	3,500	3,500	-500	-55.6	-1,000	-200
15:Public administration & defence (O)	3,500	3,000	3,000	3,000	3,000	3,000	3,500	3,500	3,500	3,500	0	0.0	500	100
16:Education (P)	5,000	5,000	4,500	4,500	5,000	5,000	5,000	4,500	5,000	5,000	0	0.0	0	0
17:Health (Q)	4,500	5,000	5,000	5,000	6,000	5,000	6,000	5,000	6,000	5,000	500	55.6	-1,000	-200
18:Arts, entertainment, recreation & other services (R,S,T and U)	1,750	1,500	1,750	1,500	1,750	1,750	2,250	1,500	2,000	1,750	0	0.0	0	0
Column Total	49,000	49,350	49,300	48,050	51,350	50,075	49,900	48,875	50,550	48,550	-450	-50.0	-2,800	-560

Source: Business Register and Employment Survey (excluding units registered for PAYE only) : open access

6.1.7 **Section 7**

6.1.8 **The Appellant's table 7.3** – only takes into account the proposed allocations within the LPR and does not account for the stepped trajectory in the LPR. Table 3 within the July 2022 Housing Supply Topic Paper (CDF.9) presents the scenarios for predicting the HDT results in future years. This is because the Local Plan Inspector has accepted the stepped trajectory as being justified. This table shows that through a combination of the stepped trajectory which the LPR uses and an increase in completions, the HDT results will pass above 75% on receipt of the HDT results for the period 2020-2023 (expected early 2024) and therefore no longer engage the presumption in favour of sustainable development. This table provides the most logical conclusion as to how long the situation of a less than 75% HDT will persist for, there is no logical explanation why Mr Tiley should dismiss this table and use the information in his table 7.3.. The Council's position is that the need to apply the presumption due to a failure of the HDT will persist until early 2024, after which the presumption need not be applied and a 5% buffer can be applied to the five-year housing land supply calculations. This is the shortest time possible due to the challenges of very low permissions as a result of the nitrates issue resulting in significantly lower completions than normal. Using the LPR to set a stepped requirement is a novel yet sensible way of achieving better HDT results to return to a plan-led system.

6.1.9 **The Appellant's table 7.4** - is also misleading as it uses the LPR requirement, but does not use the LPR proposed allocations which is misconceived as the LPR is progressing and is now at an advanced stage (see section 5 of this rebuttal). We know from the Inspector's post hearing letters what her view on the submitted allocations is, and this is set out at paragraph 4.4.23 of my proof, two sites have been removed and one site, Welborne, has had the capacity reduced, the Inspector has not stated that MMs are needed for new allocations to replace these which are removed or reduced. Further to this, the trajectory, has been found to be appropriate and justified, and therefore is more reliable, than the Appellant's tables, to consider what the 5YHLS may be in the future. This will not change as the Inspector has been clear on what sites are to be removed and changed and has in turn not identified MMs are needed to add in further allocations. This is set out by the Council in the July Housing Supply Topic Paper, table 4 (CDF.9). It is noted that this does need updating in light of the Inspector's comments, but the changes are not substantial, the Inspector states that these are *relatively minor*.

6.1.10 This again demonstrates that the Council is taking effective steps to address the supply and delivery of housing through the plan led system. Once more, demonstrating that any conflicts with the relevant policy, principally DSP40 should be given full weight, the same as previous inspectors have done so.

- 6.1.11 It is clear from the Council's assessments used in the examination of the Local Plan, and the Inspector's post hearing letters, that the Council will be able to identify a 5YHLS upon adoption of the Plan and that it is possible for the HDT result to go above 75% from the 2023 results.
- 6.1.12 **Paragraph 7.25** – of the Appellant's evidence, with specific reference to the Affordable Housing Topic Paper. This is currently under preparation, and the Council's position is the same as set out in the response to the MIQs raised by the Inspector (matter 3 Q1 CDF.14, that the housing requirement will not be increased. The Inspector herself has accepted that the data can be caveated (see paragraph 13 of the Inspector's Further Post Hearing letter CDF.13) where she requests additional data but states 'I accept that this may need to be caveated as suggested in paragraph 3.31 of the Background Paper'.
- 6.1.13 **Paragraph 7.36 of the Appellant's evidence suggests that the Council has significant work to undertake.**– However, the Inspector's Further Post Hearing Letter does not suggest that the level of work required prior to adoption is 'significant' as the Appellant suggests. Paragraph 14 references work on the schedule of main modifications being underway, paragraph 15 references the need for addenda to both the SA and HRA, and paragraph 16 references that the Council is already preparing a list of additional modifications. Therefore, the Inspector was aware that much of the required work was already underway when she sent her letter on 5th September. Three weeks have passed since then and the Council has made further progress. Moreover, paragraph 8 requires an update to the trajectory and supply position in the Housing Supply Topic Paper and the Inspector herself reflects that the errors to be corrected are 'relatively minor'. She has not requested to review the revised Housing Supply Topic paper before the start of the consultation unlike other documents that are being prepared for the main modifications consultation. This demonstrates the level of comfort that she has in the topic paper and the Council's ability to amend the minor errors. Similarly, paragraph 9 requires the Council to amend the Windfall Background Paper with information that is already available in the examination library and there is no suggestion that this is a significant task. The work required to address the Inspector's comment in paragraph 13 is addressed in the preceding paragraph and again, this work refers to data collation and presentation in a revised topic paper. Therefore, the assertion from the appellant that the remaining work is significant is conjecture. The progress of compiling a schedule of main modifications and running a consultation on them is common practice in the preparation of a Local Plan and while the Council accepts that this will take time, the time is associated with procedural matters, such as the 6 week consultation period, rather than the significance of the tasks.
- 6.1.14 **Paragraph 7.40** – of the Appellant's evidence, suggests that the LPR provides no remedy to the Council being currently below 75% on the HDT results. This is incorrect as the use of a stepped trajectory, which is considered justified by the Inspector, is action taken by the Council to ensure

the HDT can return above 75%. The Council has made this point throughout the preparation of the plan (see paragraphs 4.17 of the Plan, the Council's response to the Inspector's Initial Question number 8 (CDF.15), the Council's Matter 3 Q8 response, and the Housing Supply Topic Paper (July 2022) Addressing HDT results of less than 75%, so that are above 75% is of paramount importance to the Council to regain the ability to apply full weight to the policies of the soon-to-be newly adopted Local Plan. This approach has been accepted by the Inspector as being appropriate and justified (see paragraph 7 of her Further Post Hearings letter) and so the matter cannot be in dispute. The LPR is providing a remedy for the historic HDT results by applying a stepped requirement and the Council will achieve a five year supply upon adoption of the plan. Therefore, the Appellant's statement at 7.42 that there will be a shortfall against the housing needs that will remain post adoption of the Local Plan is incorrect. The Inspector has accepted the stepped trajectory, and therefore the stepped requirement, so to compare delivery against a requirement that is not what will appear in the LPR is inappropriate. It is the stepped requirement from the LPR that will be used in both HDT and five-year supply calculations upon adoption of the plan.

- 6.1.15 Moreover, the Appellant's evidence ignores the findings of the High Court which quashed a permission granted on appeal in a case where the Council could not demonstrate a five year housing land supply but was at the main modifications stage of their Local Plan preparation (see para 25). This case (CDK.7) is referenced in the Council's proof of evidence (para 5.30) and the parallels to this case remain that the Inspector was judged to have erred by not taking into account the preparation of the emerging Local Plan in granting permission on appeal by applying the tilted balance in the absence of the five year supply (para 34, *ibid*).

7.0 Population Statistics

7.1.1 At paragraph 5.25 – the appellant considers that the level of housing delivered in Fareham is the principal driver behind the demographic changes identified by the appellant in paragraphs 5.21 to 5.24.

7.1.2 Population growth in Fareham is below the average for England and Hampshire, but it is similar to Havant and higher than Portsmouth. Whilst Gosport, (which had a 100% record in the HDT for 2021) and New Forest (which saw a 141% record in the HDT for 2021) saw a decline in their population. The HDT results are taken from the Government’s published HDT2021 measurement¹ The inference made by the Appellant is that these characteristics were the result of lower than the requirement levels of housing delivery in Fareham, but the examples of Gosport and New Forest show the opposite.

Table 7. Population Levels

Area	Total Population (2011 Census)	Total Population (2021 Census)	Population Increase	% Increase
England	53,012,456	56,489,800	3,477,344	6.56
Hampshire	1,317,788	1,400,800	83,012	6.30
Basingstoke and Deane	167,799	185,200	17,401	10.37
East Hampshire	115,608	125,700	10,092	8.73
Eastleigh	125,199	136,400	11,201	8.95
Fareham	111,581	114,500	2,919	2.62
Gosport	82,622	81,900	-722	-0.87
Hart	91,033	99,400	8,367	9.19
Havant	120,684	124,200	3,516	2.91
New Forest	176,462	175,800	-662	-0.38
Rushmoor	93,807	99,800	5,993	6.39
Test Valley	116,398	130,500	14,102	12.12
Winchester	116,595	127,500	10,905	9.35
Portsmouth	205,056	208,100	3044	1.48
Southampton	236,882	249,000	12,118	5.12

Source: ONS, 2011 Population and Household Estimates Table 3 Usual Resident Population and ONS², 2021 Population and Household Estimates Table P02 tab³

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046293/2021_HDT_Final_Results ods

2 [2011 Census: Population and Household Estimates for the United Kingdom - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationandhouseholdestimatesenglandandwalescensus2021)

3

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationandhouseholdestimatesenglandandwalescensus2021>

7.1.3 Table 8 below compares the age structure for Fareham to England, it should be noted that in 2011 Fareham had a comparatively older population than England and that the trend of an ageing population is occurring in England as a whole. The Appellant does not provide any explanation as to why it would be principally the delivery of housing, or lack of, which would result in such demographic characteristics of an area.

7.1.4 There is no evidence that the rate of housing delivery in Fareham has led to Fareham, or anywhere else, having a comparatively older population, than what may be expected.

Table 8. Population change by age group

2011	Total	15-64	15-64 %	65+	65+ %	90+	90+ %
England	53,012,456	34,979,917	65.98	8,660,529	16.34	403,817	0.76
Fareham	111,581	70,733	63.39	22,776	20.41	1,053	0.94

2021	Total	15-64	15-64 %	65+	65+ %	90+	90+ %
England	56,489,800	36,249,800	64.17	10,401,200	18.41	498,200	0.88
Fareham	114,500	68,700	60.00	28,100	24.54	1,500	1.31

Source: ONS 2011 and 2021 Usual resident population by five-year age group

7.1.5 I consider that demographic changes between 2011 and 2021 are more complex than suggested by the Appellant and that the conclusions drawn in particular at 5.25 should be afforded no weight in this appeal. The weight to be afforded to the delivery of housing in Fareham is already accepted and agreed between both parties.