

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEAL

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

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

Local Authority Reference: P/22/0165/OA

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

1.0 INTRODUCTION

- 1.1. This Rebuttal Proof of Evidence is prepared on behalf of Fareham Borough Council (FBC) in relation to an appeal by Miller Homes Ltd and Bargate Homes Ltd in respect of Land East of Newgate Lane East, Fareham (the " appeal site").
- 1.2. The appeal has been submitted following the Local Planning Authority's (FBC) failure to determine an outline application (ref: P/22/0165/OA) for residential development on the Appeal Site within the agreed time period.
- 1.3. The appellants have appointed Mr Jeremy Gardiner to prepare a Proof of Evidence in respect of planning matters.
- 1.4. This Rebuttal Proof seeks to primarily clarify elements of Mr Gardiner's Proof of Evidence where it is considered necessary to inform the Inspector in advance of the Inquiry.
- 1.5. I have sought to avoid repetition of points made by me in my Planning Proof, and have not sought to respond to every single point raised by Mr Gardiner within his evidence. The lack of a response to any particular point within Mr Gardiner's evidence cannot be taken as agreement with it.
- 1.6. My Rebuttal covers four main topic areas, namely:
 - The emerging Local Plan;
 - The Strategic Gap and Landscape;
 - Well Related / Well Integrated;
 - Policy DSP40

2. REBUTTAL TO MR GARDINER'S PROOF OF EVIDENCE

The Emerging Local Plan

- 2.1. At 6.18 Mr Gardiner contends that the Local Plan Inspector has significant concerns around the soundness of the draft plan and at 6.21 concludes that as a result it now less advanced than it was a number of months ago and therefore can be afforded only limited weight. Put simply, I strongly disagree and perhaps if Mr Gardiner had been aware of the 5th September letter from the eLP inspector [CDF.13] when preparing his Proof, which I referred to at 5.28 of my Proof, then I consider it is likely he would have come to a different conclusion since he would have been aware that the eLP Inspector now accepted the stepped trajectory and the housing delivery coming forward from Welbourne. It would therefore have been clear to him that those significant issues had now been accepted by the eLP Inspector.
- 2.2. Mr Gardiner also makes no reference to the recent Worthing high court judgement [CDK.7] on the weight to be afforded to eLPs which I referred to at 5.30 of my Proof. The Worthing eLP was at a similar stage to which the Fareham eLP now is and as I made clear at 5.30 of my Proof, it was found that *"it would be irrational not to treat the emerging policies as material considerations, which ought to be considered in reaching a decision"*. I therefore consider that substantial weight can be attached to the relevant policies within the emerging plan which is now at an advanced stage.
- 2.3. The Council's Rebuttal Proof of Evidence from Alex Roberts addresses the Mr Tiley's criticism of the eLP in more detail at Chapter 5. I do not need to repeat his views on this matter.
- 2.4. At 6.20 Mr Gardiner refers to the eLP Inspectors request [in her Post Hearing letter of 6th June 2022 [CDF.8]] to delete draft housing allocations FTC3 and 4 in total some 214 dwellings due to uncertainty as to whether these two sites are developable. The Council's response letter of 11 August [CDF.11] states, in this respect:

"the Council's Revised Appendix B of the Local Plan in the Housing Supply Topic Paper (FBC090) demonstrates that the loss of supply from the removal of both sites can be accommodated in the housing supply numbers. The loss of both sites results in a loss of 214 homes from the supply which, alongside the change to Welborne's delivery, is a factor in the reduced level of contingency in the supply from the 11% in the submitted plan to the 7.1% referred to in the Housing Supply Topic Paper (FBC090). Given the level of scrutiny applied through the examination to all elements of supply, the Council considers this to be acceptable to the Inspector, and that it will not be instructed to consider boosting the Local Plan supply at this advanced stage of the examination."

- 2.5. The Inspectors Further Post Hearings letter of 5 September [CDF.13] does not indicate that this approach is considered unacceptable. In fact the letter makes clear that the Inspector considers that the stepped trajectory is both appropriate and justified.
- 2.6. At 8.72 Mr Gardiner sets out their latest objections to the eLP and it is important to note that their reply to the focused consultation on the 3 topic papers was shared with the inspector before she wrote to the Council on 5th September. I would comment as follows on these points:
1. The Inspector's letter of 5 September indicates that she appreciates the Council's efforts to recalculate affordable housing need using the methodology set out in PPG but further work is necessary. However, the letter does not suggest the Affordable Housing topic paper should be consulted on, prior to a Main Modifications consultation. This will avoid further delay in the adoption of the eLP.
 2. The Inspector's letter of 5 September indicates that she considers the stepped trajectory to be both appropriate and justified.
 3. The Council have been asked to corrected errors in the supply position and update the trajectory – matters which the Inspector considers to be relatively minor.
 4. It is my understanding, from discussing this issue with Gayle Wootton, Head of Planning Strategy and Economic Development, that at each of the hearings sessions the Council put forward the

evidence they had about deliverability (both category A and B sites), whether they had delivery proformas, the latest information from the developer/site promoter, any planning applications progress information, and the evidence they had of delivery start dates and rates. All of this same material was considered by the eLP inspector and she now concludes that the stepped trajectory is 'appropriate and justified'. The evidence to support the Councils assumptions in the trajectory is now considered to be unquestionable.

5. Finally, the inspector, in her 5th September letter, notes the updated windfall analysis and requests that the original background paper is revised and published at MM stage and it is my understanding that the Council see no evidence, or reason, to suggest why the MM consultation could not take place before the end of 2022.

2.7. Therefore, it is clear that with the exception of work to be undertaken on AH provision and some minor points, the representations of Pegasus Group have not been accepted by the Inspector. With regard to AH, is no indication from the eLP Inspector in her 5th September letter of any need to change overall housing figures nor the stepped trajectory to any material extent.

2.8. On the basis of what Alex Roberts has set out combined with the contents of the Inspectors 5th September 2022 letter, and my comments above, I remain of the view that the eLP is now at an advanced stage and accordingly substantial weight can be attached to the relevant policies within it.

2.9. I come to this view having regard to the wording of paragraph 48 of the NPPF and conclude, insofar as policies applicable to this appeal are concerned:

a) the eLP is now at MM stage and is therefore at an advanced stage of preparation;

b) based upon the Inspectors letter of 5th September there do not appear to be unresolved objections to relevant policies; and

c) the 5th September letter does not raise any concerns in respect of the consistency of the relevant policies – insofar as this appeal is concerned - in the emerging plan to the Framework.

The Landscape and Strategic Gap

Landscape

- 2.10. Mr Gardiner deals with landscape matters at 9.33 to 9.40 and refers to Mr Atkins Proof in stating that the proposal has been sensitively designed. Mr Atkins expresses the view that adverse landscape and visual impacts are limited to a highly localised area and that the development successfully minimises adverse landscape and visual effects.
- 2.11. This is a matter for the landscape witnesses. However, I do take issue with the appellants LVIA where, as Mr Gardiner states at 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.
- 2.12. With due respect to Mr Atkins where an LVIA finds harm it is for the planning witnesses to judge the acceptability or otherwise of them – not the landscape witness.

Strategic Gap

- 2.13. At 9.93 of his Proof Mr Gardiner criticises the Council's change in position with regard to HA2 and subsequently sets out how he considers this is inconsistent with the allocations at sites HA55 and HA54.
- 2.14. I cannot agree that the approach is inconsistent.
- 2.15. The finalisation of greenfield housing sites in the Reg19 Plan [CDF.4] was heavily influenced by the Technical Review of ASLQs and

Strategic Gaps [TRASG] [CDG.6], and is therefore landscape evidence led.

- 2.16. In respect of HA54 [Land East of Crofton Cemetery] this is within Area 7A and for this land the TRASAG found at paragraph 8 on page 98 that:

"However there exists the potential to make modifications to the settlement boundary of North Stubbington: to extend the boundary to run along Oakcroft Lane, as the isolated field that sits aside Crofton Cemetery, does not protrude into the landscape beyond the current Northern and Western edges of Stubbington. Largely sitting behind a mature line of Poplars also helps this isolated field absorb some development (subject to detail design), without risking the integrity of the Gap, as a whole."

- 2.17. In respect of HA55 [Land South of Longfield Avenue] this is within Area 7B and for this land the TRASAG found at paragraph 9 on page 98 that:

"Whilst this area comes under the same Landscape Character Area as Strategic Gap Study Area 7a, the terrain is much flatter, and the blocks of vegetation are less varied. Vegetation around the main large field screens the field from view from many vantage points. There are much fewer opportunities to see across this land, unless close to the field gates. From within the main field there are more visual detractors in the form of MOD buildings in HMS Collingwood, a low-rise tower in the adjacent estate off Longfield Drive and a long view to the Fareham Borough Council Office Tower Block. Subject to detailed design, scale and functions, it is considered possible for the main field to absorb some development without a significant impact on visual quality of the Strategic Gap. If managed appropriately, development could have beneficial effect on the GI network (recreational and environmental) that exists around the periphery of the field subject to appropriate attention being paid to GI provision and design. Therefore a change in Strategic Gap boundary could potentially be accommodated without undermining the principal purpose of the gap to prevent coalescence of settlements."

- 2.18. In respect of HA55 it is material to note that the eLP Inspector's Post Hearing Note of 6th June 2022 specifically considered this allocation

at paragraphs 45 to 50 and at 46 she makes clear that she considers that, having regard to the purpose of the Strategic Gap and the requirements of Policy DS2, the principle of this allocation is soundly based.

2.19. I accept that CS22 does not prohibit development within Strategic Gaps and in the case of both HA54 and HA55 the TRASG found that development of those sites would not affect the integrity of the Gap.

2.20. It is therefore clear that this is a matter that has to be assessed on a case by case basis and be landscape led, there is no inconsistency of approach.

2.21. Finally, in respect of HA2 this is within Area 8C and for this area the TRASAG found at paragraph 15 on page 99 that:

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

2.22. In my opinion the TRASAG provides a clear and defensible approach to the inclusion of some land as housing allocations within the Reg19 Plan which were previously within a strategic gap and the exclusion of other land. This is not an inconsistent approach as alleged by Mr Gardiner.

Well Related / Well Integrated

2.23. At 9.21 to 9.32 Mr Gardiner examines the components of DSP40(ii) in isolation and at 9.27 to 9.32 Mr Gardiner deals with the issue of well-related and well-integrated.

2.24. 'Well-related' should be considered from a landscape perspective. It is made clear in paragraph 26 of Inspector Jones' decision on Newgate Lane East [**CDJ.6**] that the issue of well-related and well-integrated:

"However, I also see no reason why criterion (ii) should not also be considered from a landscape and visual perspective. Consequently, for the landscape and visual impact assessment reasons outlined above, particularly given the extent to which it would project from the existing settlement boundary out into the countryside, the proposed development could not be said to be well related to the existing settlement boundary and well integrated with the neighbouring settlement in the terms of Policy DSP40 (ii)."

2.25. It is the evidence of Mr Dudley on behalf of the Council¹, that the appeal site does not relate well to the established settlement edge of Bridgemarky. It would not be seen as a logical comprehensive westward extension to the settlement. Therefore, from a landscape perspective there is conflict with DSP40(ii).

2.26. That said, I also accept the comments made by Mr Wall on highway matters on behalf of the appellant that well-integrated can have a connectivity consideration. In this regard he states at 3.2.5 that HCC have confirmed that no further access to the east of the appeal site is necessary.

2.27. Mr Wall also states at 7.4.3 that the Committee Update Report finds no conflict with DSP40(ii). I disagree. As a matter of fact, the update reports states the following, at 6.4.12:

"The site is located immediately adjacent to and well related to the existing defined urban settlement boundary of Woodcot and Bridgemarky within Gosport Borough and lies immediately to the

¹ At paragraphs 4.19 to 4.24 of his Proof

south of the Fareham Urban Settlement Boundary. Consideration of the accessibility of the site to the neighbouring settlements was set out in Section 8(c) paragraphs 8.20 – 8.29 of the Committee Report. Section 8(c) highlights that on balance the site would be sustainably located. However, having regard to the comments raised by the Appeal Inspector for Appeal A (to the south of the site) criteria (ii) of DSP40 should also be considered from a landscape and visual impact perspective (paragraph 26 of the Appeal Decision). Despite its location, and connectivity to the north and proposed development to the south, the proposed development would remain largely cut off and isolated from the remainder of the built-up area to the east. It is therefore considered that the proposals would not be well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement, and would therefore fail to fully comply with criteria (ii) of Policy DSP40.”

2.28. As I make clear in 8.64 and 8.65 of my Proof, the lack of connectivity and the strong linear form along the rear gardens of the houses on Tukes Avenue and Pettycot Crescent which backs onto the appeal site mean the development would not be well related, and would be an isolated development from the remainder of the main, neighbouring residential areas to the east. The development would also breach the existing defensible boundary along the western side of Gosport Borough. In addition, the lack of access points on the east boundary of the current settlement boundary [there being just one opposite Woodcote Primary School] prevents the site from being well integrated, with long walking distances for many people wanting to get onto Tukes Avenue. This is particularly relevant for those residents who would live more centrally within the proposed housing site.

2.29. Accordingly, there would also be conflict with DSP40(ii) in these terms.

POLICY - DSP40

- 2.30. At 9.11 Mr Gardiner draws on a quote from the decision letter of Inspector Jones [CDJ.1] at paragraph 46 where he states:

*"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". [my emphasis]*

- 2.31. I have examined the evidence provided by the LPA in this hearing and it would appear to me that this analysis was based upon reference to a number of appeal decisions and an examination of the five year HLS position.

- 2.32. As Alex Roberts, on behalf of the LPA, has made clear in his rebuttal on Housing matters, the five year housing supply figures over recent years has been influenced by a number of factors.

- 2.33. In the Posbrook Lane, Funtley public inquiry, where I gave evidence on planning and housing matters, I sought to illustrate that sites have come forward with officer support through DSP40, and not just through appeal decisions. In my proof I made the following comments:

7.38 As set out earlier in my evidence, the Council has an express policy permitting development in the countryside if DSP40 is satisfied and has used that policy to grant permissions when appropriate to do so. The very presence of the policy bolstered with the comments of the Inspector who found it sound, demonstrate that the Council is serious about addressing the situation. The Inspectors in the Appeal decisions referred to above appreciated that the Council was serious about addressing the shortfall and this policy was intended to do that – this is why it should be given full weight and any breach of it very significant weight.

7.39 Furthermore, through the Plan-making work, the Council has publicly identified potential sites as being appropriate for development, thus encouraging applications to be made.

Significant progress has been made in granting permission for major housing sites compliant with policy DSP40 on land at Warsash, Titchfield and Funtley.

- 7.40 In Warsash planning permission has been granted for a total of 255 homes on land outside of the urban settlement boundaries included as a draft housing allocation in the publication local plan (housing allocation HA1 measuring 33.43 ha with an indicative yield of 824 dwellings). A further 431 houses are the subject of favourable resolutions to grant permission meaning once issued very shortly the Council will have permitted 686 homes due to the compliance of these proposed developments with policy DSP40 and in light of the Council's lack of a five year housing land supply. This is a significant contribution towards addressing the shortfall in housing supply brought about due to the efficacy of this policy which is designed for such a scenario.*
- 7.41 At Titchfield on land to the east of Southampton Road, outline planning permission has been granted for up to 105 homes (reference P/18/0068/OA) following an assessment by Officers of compliance with policy DSP40 and a favourable resolution by the Council's Planning Committee. Officers found no conflict with the constituent parts of policy DSP40, for example due to actual and significant harm to the character and appearance of the area. Reserved Matters approval has recently been granted for 95 dwellings (reference P/20/1584/RM). This site comprises part of a larger draft housing allocation in the publication local plan (HA3 measuring 7.6 ha) estimated to be able to accommodate up to 348 dwellings. It is another example of how development land identified in the publication local plan as a potential site for housing has been brought forward ahead of the plan process due to the permissive ability of policy DSP40.*
- 7.42 In Funtley, two housing sites have been permitted providing a total of 82 homes (references P/17/1135/OA and P/18/0067/OA) in light of positive recommendations from Officers to the Planning Committee after careful consideration of policy DSP40.*
- 7.43 The planning permissions granted or soon to be issued at these three 'clusters' alone will deliver a total of 873 dwellings within the countryside as a result of the application of policy DSP40.*

7.44 At Down End Road, Portchester, during the recent public inquiry the single outstanding issue of safe highway design was resolved, no planning evidence was given and the appeal was subsequently allowed for 350 dwellings.

2.34. Having regard to this evidence, and other matters, Inspector Rose concluded on DSP40 at 117 as follows:

"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."

2.35. Alex Roberts has provided a more detailed update to this list of major residential schemes that have been formally approved by the Council through DSP40 as set out in his Table B.

2.36. His Table demonstrates that the Council have adopted a proactive approach to the interpretation of DSP40 and that a considerable number of sites have come forward. When it comes to appeals [Alex Roberts Table C] the issues are often technical such as highways and ecology or have revolved around the extent of landscape harm. It is right that such concerns are examined at appeal and appeals have been both dismissed and allowed.

2.37. It is also important to note that the Table B of Mr Roberts relates to actual decision notices issued by the Council whereas the figure I referred to the Posbrook Lane inquiry included a number of sites with a resolution to Permit but were subject to a legal agreement. In this regard there are in addition to his Table, a number of applications which have a committee resolution to permit but the decision has yet to be issued. These include:

- P/17/0845/OA - Outline planning permission for up to 180 dwellings on land to the east of Brook Lane
- P/19/1322/OA - Outline planning permission for up to 39 dwellings on land at 139 Southampton Road, Titchfield
- P/19/870/FP - Full planning permission for 32 dwellings at Rookery Avenue, Sarisbury

2.38. Moreover, the approach in respect of the primacy of the development plan is reaffirmed in the very recent decision [21 September 2022] of Inspector Pannell in respect of a scheme for 32 dwellings on Land East of Wallington Road, Wallington [CDJ.32] where he states at paragraph 56:

"The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict."

2.39. I also draw on the most recent DSP40 appeal decision dated 23rd September in respect of a scheme for 49 dwellings on Land to East of Cartwright Drive, Fareham [CDJ.33].

2.40. In this case Inspector Holden noted at paragraph 9 that the Council were unable to demonstrate a 5-year HLS and that it had also failed the HDT. As a result, he found that paragraph 11 d) of the Framework was engaged and the policies in the development plan that restrict development beyond settlement boundaries [CS2, CS6, CS14, CS22 and DSP6] must be considered to be out-of-date.

2.41. In this regard and with specific reference to DSP40, Inspector Holden states at paragraph 10:

"The Council is aware of the challenges of maintaining a sufficient supply of housing land in the area. LP2 therefore includes Policy DSP40 which specifically addresses the issue of permitting sites beyond settlement boundaries when there is a shortfall in the 5YHLS. For a site to be acceptable the policy requires it to meet all five criteria. In this case the Council accepts that the proposal complies with criterion i) and iv). It is therefore necessary to consider whether the proposal meets the three remaining criteria."

2.42. Inspector Holden dealt with the Planning Balance in paragraphs 43 to 48 of his decision letter and at paragraph 44 found that the proposal would "unacceptable harm to the character and appearance of the Upper Meon Valley, and would significantly affect the integrity of the

Meon Valley Strategic Gap". As a result there would be conflict with Policies CS5, CS14, CS15 and CS22 of the CS and Policy DSP6 of LP2.

- 2.43. At paragraph 45 he noted that the absence of a 5YHLS meant that conflict with the above policies carried only moderate weight and Policy DSP40 of LP2, which requires compliance with a series of five criteria, was engaged. He continued:

"I have found the proposal would fail to comply with criteria ii) and iii) which require development beyond the settlement boundaries to be well related to the neighbouring settlement and to minimise adverse effects on the countryside and the Meon Valley Strategic Gap. There is therefore conflict with Policy DSP40 and the development plan as a whole."

- 2.44. At paragraph 46 he set out the various benefits of the scheme and considered them to be *"significant factors in the scheme's favour"*.

- 2.45. However, at paragraph 48 he concluded his Planning Balance by stating:

".....the very significant cumulative adverse impacts of the proposal associated with its effects on the Meon Valley landscape and Strategic Gap, and its poor relationship with existing residential development and services, would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. The scheme therefore does not benefit from the presumption in favour of sustainable development."

- 2.46. Finally at paragraph 49 he concluded his decision letter by stating:

"The proposal conflicts with the development plan and there are no other material considerations, including the Council's housing supply position, that indicate that a decision should be taken other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed."

- 2.47. I consider that within these appeal decisions quoted above there is no question of suggesting the balance has been set incorrectly in relation to criteria (ii) and (iii) because of sustained lack of supply. In my view

this is more evidence that Inspector Jones in East of Newgate at para 31 called it wrong. Indeed in my judgement the decisions that I told Inspector Rose about, and have updated in this rebuttal, that the council have taken in line with DSP40 are critical. In my view Inspector Rose's decision is the one which clearly pivots DSP40 analysis away from Inspector Jones' approach.

- 2.48. It is therefore clear that DSP40 should be afforded full and overriding weight in the planning balance for this appeal.