

Appeal by Miller Homes and Bargate Homes Ltd in respect of Land East of Newgate Lane East, Fareham

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

Opening Submissions on behalf of
Fareham Borough Council
(Inquiry commencing 11/10/22)

1. Introduction

- 1.1 The application, now the subject of this appeal was made in January 2022. An appeal was lodged against non-determination on 25 May 2022. The Planning Committee considered a report and update report recommending refusal on 15 June 2022. The update report which was prepared provided information from the post hearing letter of the Inspector who is carrying out an examination of the Fareham Local Plan 2037. It addressed the effect of the removal of units from the five year supply which caused officers to advise that, as at the present time, the Council could not demonstrate a five year supply with the result that policy DSP40 of the Local Plan was engaged. It was resolved that, had members been able to determine the planning application, they would have resolved to refuse permission for the reasons given.
- 1.2 At this stage in the appeal both parties are agreed that the reasons relating to the effect on the integrity of European Protected Sites have been satisfactorily addressed, and the evidence has been provided for you, Inspector to carry out the appropriate assessment. Furthermore, following the submission of further information on highways, the Council

is of the view that putative reason for refusal h is overcome and have confirmed that it does not intend to pursue this matter.

1.3 It follows that the reasons for refusal give rise to the following core issues which fall for your determination:

(1) The effect of the proposed development on the spatial development strategy for the area;

(2) The effect on the character and appearance of the area;

(3) The impact of the proposed development on the integrity of the Strategic Gap and the physical and visual separation of settlements; and

(4) The effect on the best and most versatile agricultural land.

1.4 It is agreed that:

(1) The Council cannot demonstrate a 5 year housing land supply and therefore the titled balance in paragraph 11 of the NPPF applies;

(2) Whilst the parties differ on the precise extent of the current shortfall, the shortfall is material either basis, as such it is unnecessary for you, inspector, to conclude on the extent of the shortfall (Statement of Common Ground on Housing Land Supply Matters CDL.4 paragraph 2.12);

(3) The development would fall outside of development boundaries in circumstances contemplated by policy DSP40 of the Local Plan Part 2. Policy DSP40 provides that, where the Council does not have a 5 year housing land supply, additional housing sites, outside of the urban area boundary, may be permitted only where five criteria are met;

(4) These criteria include the following requirements in respect of any proposed development:

- “(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 minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps”; and

- “(v) The proposals will not have any unacceptable environmental, amenity or traffic implications.”

1.5 It follows that, Inspector, the development plan provides you with a mechanism by which to determine appeals such as these in circumstances where the Council is unable to demonstrate a 5 year housing land supply.

1.6 This is of central importance because it enables you to reconcile the need to apply the titled balance to appeals where there is a shortfall in housing land supply whilst also recognising the fundamental need to ensure that development should be plan-led. This is inherent in section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 which establish a statutory presumption in favour of the Development Plan. This presumption is re-emphasised in the Framework and was the subject of guidance by the Court of Appeal in *Gladman Developments Limited v Daventry* [2016] EWCA Civ 1146. In respect of a very old development plan Sales L.J. stated at paragraph [40](iv):

“(iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF (2012), at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all.”

1.7 Policy DSP40 has been considered by a series of Inspectors who have emphasised its importance, for example in the Land West of Old Street, Stubbington decision (APP/A1720/W/18/3200409, CDJ.28), the Inspector noted:

“Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing land supply shortfall as is the case here. It allows housing to come forward outside of settlements and within strategic gaps, subject to a number of provisions. It seems to me that this policy seeks to complement the aforementioned policies in situations where some development

in the countryside is inevitable in order to satisfy an up-to-date assessment of housing need. It assists the decision maker in determining the weight to be attributed to the conflict with restrictive policies such as CS14, CS22 and DSP6 and provides a mechanism for the controlled release of land through a plan-led approach. Policy DSP40 is in accordance with Framework policy and reflects that the LPP2 post-dates the publication of the Framework in 2012. Conflict with it should be a matter of the greatest weight.”

(paragraph 11)

- 1.8 Mr Jupp (the Council’s planning witness) collated decisions taken under DSP40 whilst giving evidence in the Posbrook Lane, Funtley inquiry (CDJ.4 25 January 2022). He demonstrated that, as well as sites coming forward through appeal decisions, many sites have come forward with officer support through DSP40. Inspector Rose concluded on DSP40 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 award the policy full and overriding weight.”

- 1.9 This mirrors the approach taken in the two most recent appeal decisions to apply DSP40: Land East of North Wallington Road, Fareham (CDJ.32 – 21 September 2022) and Land to the East of Cartwright Drive, Fareham (CDJ.33 – 23 September 2022).

- 1.10 This analysis respects the dicta of Lord Carnwath at paragraph [55] of *Suffolk Coastal DC v Hopkins Homes and another [2017] UKSC 37* (CDK5). The fact that the provisions of DSP40 are breached puts the development squarely at odds with the Council’s development strategy and the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath at [21] the Framework:

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

- 1.11 The development plan requires that applications such as these, should be dealt with in accordance with this policy. It is by complying with the terms of this policy that

proposed development for housing outside of the settlement boundary escapes the fundamental constraints of settlement boundary policy. It follows that a failure to give this policy anything less than very substantial weight would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme (to use the words of Lord Carnwath above).

2. The Case for the Council

2.1 The evidence will demonstrate, Inspector, that in an attempt to make the submission that the appeal proposals comply with the provisions of the Development Plan, the Appellant is forced into a series of untenable assertions on each of the main issues upon which you have to decide:

- It is suggested that harm to the countryside can be satisfactorily minimised in circumstances where it is accepted by the Appellant that the development proposed will be significantly harmful; the Appellant terms impacts, which are accepted to be significantly adverse “acceptable” based upon a misunderstanding of the published landscape evidence base;
- It is suggested that the countryside within which the development would sit is of “medium” sensitivity to the development proposed, despite the categorisation of it as “high” within the recently carried out Fareham Landscape Assessment (2017) (CDG20) and a finding that it is “medium/high” by Inspector Jenkins when determining the Newgate Lane (North and South) Appeal (CDJ.7 paragraph 29 – agreeing with Ian Dudley using his methodology). This is based upon an incorrect assertion by the Appellant that the Newgate relief road reduces (rather than increases) sensitivity in the face of the warning in the FLA (echoed by Inspector Jenkins at paragraph 29) that: “*Significant further development in addition to the road scheme would almost certainly have this (overwhelming urbanising effect across the area as a whole), potentially tipping the balance towards a predominantly urban character*” (page 153, 4th paragraph) and that there is accordingly a need in this location “*to keep the urban boundaries as tightly drawn as possible*” (page 157, 2nd paragraph);
- It is suggested that the appeal scheme would acceptably minimise impact on the strategic gap, in circumstances where it comprises an application for 375 dwellings, twice the number dismissed on appeal in respect of the Newgate Lane (North and South) appeal by Inspector Jenkins (CDJ.7) and almost four times the number found to have a reasonably significant effect on the physical and visual separation of

settlements by Inspector Jones in the appeal for the land immediately to the south of the appeal site (CDJ.1).

(1) Conflict with the Development Plan

Spatial strategy

2.1 Mr Jupp will demonstrate that where the Council is unable to demonstrate a 5 year housing land supply, the circumstances where market housing outside of the defined development boundaries of Settlements is permitted are strictly controlled in line with policy DSP40. That Policy provides that permission for development outside of the defined development boundaries of settlements will only be granted where all of the criteria in (i)-(v) are met.

2.2 The supporting text provides at 5.163-4 (CDE2a) that:

“Therefore, further flexibility in the Council’s approach is provided in the final section of DSP40: Housing Allocations. This potentially allows for additional sites to come forward, over and above the allocations in the Plan, where it can be proven that the Council cannot demonstrate a five year land supply against the Core Strategy housing targets...

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

2.3 Mr Jupp will demonstrate that the proposed development would be in conflict with DSP40(ii), (iii) and (v) and therefore the spatial strategy and the development plan as a whole.

2.4 As confirmed by Inspector Jones in the Land East of Newgate Lane Appeal (CDJ.1 paragraphs 25-6) whether a proposal is well related to the existing urban settlement

boundaries and can be well integrated with the neighbouring settlement should be considered in a functional sense and from a landscape and visual perspective. Mr Dudley and Mr Jupp will demonstrate that the proposed development would not be well related to the existing urban settlement boundaries or well integrated with the neighbouring settlement.

Impact on the Countryside and Strategic Gap

- 2.5 DSP40(iii) provides that proposals must be sensitively designed to reflect the character of the neighbouring settlement and minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps. Mr Dudley will demonstrate that the proposed development is fundamentally inconsistent with the policy context for this area, in particular the Fareham Landscape Assessment (2017) (CDG.20) and the conclusions of the Technical Review of Areas of Special Landscape Quality and Strategic Gaps (CDG6).
- 2.6 Inspector, it will be demonstrated that you are effectively being asked to change the status of this piece of countryside, designated strategic gap, on appeal in the face of the clear conclusions of the FLA and the Technical Review. To take such a course would be inimical to the principles of plan led development.

Loss of Best Most Versatile Agricultural Land

- 2.7 The development would result in the loss of 10.8 hectares of Grade 3a “good quality” BMVAL

(2) Planning Balance

- 2.8 Mr Jupp will demonstrate that the proposed development is in substantive conflict with the Development Plan, failing as it does to comply with policy DSP40 which expressly deals with how an application such as this should be determined. Very significant

weight should be afforded to this harm which significantly and demonstrably outweighs any benefits.

David Lintott

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10/10/22