

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
LAND EAST OF NEWGATE LANE EAST,
FAREHAM.**

OPENING SUBMISSIONS

**ON BEHALF OF
THE APPELLANTS**

1. These Opening Submissions are made on behalf of the Appellants in respect of a non-determination appeal of an outline application for 375 dwellings (including 40% affordable housing), open space and associated development [‘the scheme’] on land east of Newgate Lane East, Fareham [‘the site’].

2. The site lies outside but immediately adjacent to the settlement boundary of Bridgemary/Woodcot, in a sustainable location for additional housing growth with ready access to services and facilities¹. It is bounded to the north and east by sports fields and existing housing, to the south by a recently approved residential scheme for 99 dwellings and to the west by Newgate Lane East, a modern relief road running north/south. Together with the recently approved scheme to the south, the appeal site was proposed to be allocated by Fareham Borough Council [‘the Council’] for housing as site HA2 in the Reg 18 LP. For reasons that will be explored in evidence, that allocation was not pursued in the Reg 19 plan, as the Council erroneously believed, at

¹ Planning SoCG para 5.7

that time, that it needed fewer houses. The planning merits of the site remain unchanged, however.

3. The Council resolved that, had it determined the application, it would have refused it for 14 reasons. Of these, 9 have now formally been resolved. Importantly, these now resolved issues cover ecology (including HRA matters) and highways. Reason (n) (education provision) is not a matter that will prevent planning permission being granted as the s.106 obligation secures whichever sum the Inspector resolves is justified under the CIL Regs Reg 122. Reason (h) (agricultural land value) is not considered a justification for withholding permission on its own².
4. That leaves, as between the Council³ and the Appellant putative reasons (a), (b) and (c). These are, respectively: the principle of developing beyond the adopted settlement boundary; landscape and visual impact; and impact on the strategic gap.
5. The Council acknowledges that it cannot demonstrate the required 5 year housing land supply and (subject to Habitats issues) paragraph 11(d) of the NPPF is engaged. There is no highway, amenity, biodiversity or historic environment objection. By contrast, there is an acknowledged and pressing need for housing and for affordable housing in the Borough.
6. The remaining putative reasons for refusal will now be explored in evidence, but it is immediately apparent that they fall into two parts: an ‘in principle’ objection to development outside the settlement boundary, and ‘scheme specific’ objections arising from the form of the development proposed.
7. That first, in-principle, objection [putative reason (a)], is not able to be maintained. The Council’s 2012 development plan policies in respect of its spatial strategy are out of date both in their own terms, being predicated on non-NPPF compliant assessments of housing need (see the Supreme Court in *Hopkins Homes*) and by operation of footnote 8 to the NPPF by virtue of the agreed inability of the Council to be able to demonstrate

² Planning SoCG para. 5.10

³ The County Council, formally, maintains a highways objection – not to the capacity or safety of the proposals in highways terms, but to an ‘in principle’ objection to a new access onto Newgate Lane. It does not, however, seek to appear to defend that stance. Very properly, FBC, as LPA, does not pursue putative reason for refusal (i) – see Planning SoCG para. 6.17

the required 5 year housing land supply. In turn, then, the settlement boundaries on which these policies are predicated are out of date. Thus it is agreed that strategic policies CS2, CS6, CS14, CS22 and DSP6 are all out of date, and should be afforded reduced weight⁴.

8. In addition, as the Council cannot demonstrate a 5 year housing land supply, policy DSP40 is engaged, which, it is agreed, operates as an ‘exceptions policy’⁵ to the otherwise restrictive development plan policies.
9. Policy DSP40 has its own five criteria, which operate as has been found by recent Inspectors (but must be the case in any event) in a less restrictive manner than the policies to which they are exceptions. Compliance with these criteria render a scheme *in conformity with* the development plan ‘taken as a whole’, and thus benefitting from the first part of s.38(6) and para. 11(c) of the NPPF.
10. Further, as one of (arguably *the*) ‘most important’ policy for the determination of the application, DSP40 itself is subject to para. 11(d), such that its own criteria are deemed ‘out of date’ and have reduced weight. Again as has been observed by appeal inspectors, the very fact that the Council still has a housing shortfall indicates that DSP40 is either framed or is being applied too strictly for it to do its job.
11. Of the five criteria in DSP40, the Council acknowledges (i) and (iv) are met⁶. The allegations in putative reasons (b) (landscape) and (c) (gap) cause the Council to claim breaches of part of DSP40 criterion (ii) and criterion (iii) [the alleged breach of (v) is by reference to BMV land – agreed not to justify refusal⁷]. If these objections two are not made out, DSP40 would be supportive of development here, outside the out-of-date settlement boundary. Thus it can be seen that the ‘in principle’ putative reason (a) is actually predicated on making good the landscape/gap objections in reasons (b) and (c). The Council’s stance is, actually, then, a scheme-specific not an in-principle objection at all.

⁴ Planning SoCG para. 5.2

⁵ Planning SoCG para. 5.3

⁶ Planning SoCG para. 5.6

⁷ Planning SoCG para.5.10

12. In this context it is important to note that the site was proposed to be allocated (along with the now consented land to the south) by the Council itself, when it was believed that it was needed for housing numbers. This was despite it being located in the countryside and the adopted Gap. Quite rightly, neither was seen as a bar to beneficial residential development. The circumstances on the ground have not changed since then, and there is an acknowledged and pressing need for housing and affordable housing,
13. The Council's case for opposing this worthwhile development will now need to be explored, but it is worth observing at this stage that both for 'countryside' and 'Gap' the policy test in DSP40 is not to cause 'no' harm, but to 'minimise' harm. In that context, the injunction to 'respond positively' are predicated on there being development proposed, or else the policy would be self-defeating.
14. Inevitably there will be some impact on the character and visual amenities of the countryside by introducing development on a greenfield site, but this is a 'non-valued' landscape in terms of para. 174(a) of the NPPF and the design and location carefully minimise the adverse landscape impacts beyond the site boundaries. Similarly, development of this nature will inevitably occupy land currently designated as a Strategic Gap, but its location, east of Newgate Lane and east of the important tree belts associated with the sewage works at Peel Common will ensure that the function and integrity of the Gap is not compromised.
15. For all of these reasons, the scheme will be commended to the Inspector (and DSP40 will be shown to be met), but the context of the absence of a housing land supply and a pressing need of affordable housing will also inform the tilted balance in para. 11(d)(ii), should it be found that there is a breach of any part of DSP40.

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11th October 2022

Landmark Chambers,

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