

Land East of Newgate Lane East, Fareham

Progress on the emerging Local Plan

On behalf of Miller Homes Ltd and Bargate Homes Ltd.

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1. Introduction

- 1.1. At the opening of the current inquiry, the Council introduced a new document which sought to summarise the recent progress on the examination of the emerging Fareham Local Plan (ID3). This refers to numerous Appendices which were not submitted to the inquiry including an Affordable Housing Background Paper which I have been informed will be provided to the inquiry by the Council when it reconvenes on Tuesday 18th October 2022.
- 1.2. This short note briefly addresses the materiality of this newly arising evidence on behalf of the Appellants.

2. The newly arising material considerations

- 2.1. The submission draft Local Plan (CDF.5) sets out in paragraph 4.3 that it would meet affordable housing needs in full and as such it was not necessary to increase the housing requirement above the minimum local housing need of the standard method and the agreed contribution of 900 homes to address sub-regional unmet needs.
- 2.2. The need to consider such an increase is set out in the PPG (2a-O24) which states that:

“An increase in the total housing figures included in the plan may need to be considered where it could help deliver the required number of affordable homes.”

- 2.3. In response to the representations submitted prior to submission, under Matter 3 (Housing Need and Supply) the Inspector asked a series of questions to substantiate the proposition raised in paragraph 4.3 and to determine whether or not there was a need to consider increasing the housing requirement including:

“Has the affordable housing need been correctly established, and is it based on up-to-date information?”

Based on the requirement for qualifying developments to provide affordable housing as set out in Policy HP5, how many affordable homes is the Plan expected to deliver?”

How does this compare to the identified need?”

- 2.4. In light of the representations received, and through extensive discussions at the hearing session, the Inspector recognised that the Council had not assessed the need for affordable housing in accordance with national guidance and requested that this was undertaken.
- 2.5. In her Post-Hearings Letter (CDF.8) the Inspector then identified in paragraphs 2 and 4 that she had significant concerns which went to the soundness of the emerging Local Plan which were addressed throughout the remainder of the letter. One of these significant concerns as

set out in paragraph 19 was the previous absence of an assessment of affordable housing need that complied with the guidance¹.

- 2.6. The Council then published Affordable Housing Background Paper in July 2022 (CDF.10) which was subject to a focussed consultation. This identified a current unmet need for 4,874 affordable homes in Table 2. It then proceeded to calculate the future need for affordable housing on the basis that the proportion of the existing housing stock that was affordable housing represented the proportion of households in need for affordable housing as explained in paragraph 3.32. This is clearly a fundamentally flawed approach as it assumes that the existing supply met the need in full when there is accepted to be an existing substantial unmet need. In response to the focussed consultation, this and other points were raised by numerous participants.
- 2.7. On this flawed basis, the paper identified a need for 5,422 affordable homes over the plan period in paragraph 3.35 and a supply of 5,366 homes², leaving a shortfall of 56 affordable homes. The Council suggested that this shortfall could be made up through the delivery of Council owned sites and Policy HP6 of the Local Plan, such that the need for affordable housing would be met by the emerging Local Plan as set out in paragraph 4.3 of the submission draft.
- 2.8. In response, the examining Inspector set out in paragraphs 12 and 13 of her Further Post-Hearings letter (CDF.13) that:

“...The approach the Council has taken, calculating the proportion of affordable housing stock to market housing stock appears crude and risks not taking account of all relevant households. I have concerns that it could therefore be an underestimate and may not be robust and justified...

...As such, I request that the Council follow the PPG methodology using the data sources available. I accept that this may need to be caveated as suggested in paragraph 3.31 of the Background Paper. Once this work has been completed a revised Background Paper should be prepared and again published alongside the MM consultation. Depending on the outcome of this work, the Council may also wish to put forward potential options to address any matters arising.” (emphasis added)

- 2.9. It was therefore clear that the Inspector had significant concerns with the failure of the Council to assess the need for affordable housing in accordance with the guidance which went to the soundness of the emerging Local Plan owing to that fact that she considered that the need for affordable housing was likely to have been underestimated. The Inspector proceeded to identify that depending upon the outcome of the necessary additional work, this may necessitate modifications to the emerging Local Plan including to the housing requirement in accordance with the PPG.

¹ Although it should be noted that at that point the Inspector had been informed that the Council had subsequently undertaken such an assessment.

² Comprising a supply of 2,639 affordable homes arising from vacancies and the relet of existing affordable homes and a newly arising supply of 2,727 affordable homes in paragraph 4.7.



- 2.10. In the absence of this necessary assessment, I estimated in paragraph 8.8 of my Proof of Evidence that in reality there would be a need for somewhere in the region of 7,326 to 7,708 affordable homes.
- 2.11. The Council has now sought to assess the need for affordable housing broadly in accordance with national guidance³ in the updated Affordable Housing Background Paper⁴ and identify a need for 7,227 affordable homes over the plan period in paragraph 4.11 which broadly corresponds with my estimate.
- 2.12. The Council however mistakenly treat this as a maximum and continue to assess the need for affordable housing as a range between that which arose from the fundamentally flawed approach (which does not comply with the PPG and with which the Inspector has significant misgivings) and the PPG-compliant assessment. In reality, the only robust approach of those presented by the Council is that which complies with the PPG and as such the evidence suggests that there is a need for 7,227 affordable homes.
- 2.13. The Council seek to cast doubt upon the results of the PPG-compliant assessment of need in paragraph 3.44 of the updated Affordable Housing Background Paper, by drawing reference to the fact that the number of households registered in affordable housing need in the Borough has remained broadly static over recent years. This is again a fundamentally flawed assertion as recognised by numerous appeal decisions including because:
- i. The number of households registered in need of affordable housing is a very poor indicator of the need for affordable housing as is evident from the fact that only 552 households are currently on the register but the Council acknowledge that there is a current unmet need for 4,874 affordable homes.
 - ii. In LPAs such as Fareham Borough where there has been such a chronic shortfall of affordable housing, those in need of affordable housing are likely to be increasingly less incentivised to register owing to the remote prospects of accessing affordable housing and the significant time, effort and stigma attached with registering. The consequence of this is that the difference between the number of households on the register and the number of households in need of affordable housing is likely to have increased such that the number of registered households becomes increasingly less representative.
 - iii. Any longitudinal analysis of the number of households on the register fails to take account of the periodic reviews of the eligibility criteria and the households on the register such as that identified in paragraphs 3.8 and 3.9 of the paper. As a result of these periodic reviews any such analysis does not compare like with like⁵ and does not provide any assistance in determining a direction of travel.
 - iv. Additionally, where there has been such a chronic under-supply of affordable housing as there has been in Fareham Borough, those in need of affordable housing are likely to have found it necessary to migrate out of the Borough to find suitable accommodation,

³ Although I don't agree with all of the assumptions applied by the Council and believe that this may be an under-estimate of the actual need for affordable housing.

⁴ Which I'm told will be provided to the inquiry by the Council on Tuesday.

⁵ For example, this will result in the number of households on the register prior to and following such a review which are not comparable.



such that even if the number of registered households could be robustly considered on a longitudinal basis, this would not be reflective of the extent of the need for affordable housing within the Borough as it disregards the potentially significant number of households in need that have found that they have no option but to move elsewhere.

- v. Even if the flawed analysis of the Council was considered robust notwithstanding each of the preceding points, paragraph 3.37 of the paper assumes that households can afford to spend 25% of their income on accommodation costs. This takes no account of the newly arising cost of living crisis, such that now households are likely to be able to spend a lower proportion of their income on accommodation as a greater proportion is diverted to energy costs. The effect of this is that one would expect that a far greater number of households will fall into affordable housing need than have in the past.
- 2.14. Therefore, the argument advanced by the Council to verify the conclusions of their fundamentally flawed approach simply does not stand up to scrutiny. The only robust assessment is that which arises from the PPG and this identifies a need for 7,227 affordable homes over the plan period according to the Council, and this may be an under-estimate of the actual need.
- 2.15. In response to the need for 7,227 affordable homes, the updated paper identifies a supply of 5,348 affordable homes⁶ such that the evidence now demonstrates that the emerging Local Plan provides for an unmet need for 1,879 affordable homes.
- 2.16. Accordingly, the emerging Local Plan does not meet the need for affordable housing as suggested by paragraph 4.3 and there is a substantial shortfall. In such circumstances, paragraph 4.3 and the PPF (2a-O24) both identify that the Council will need to consider increasing the housing requirement to better respond to the affordable housing need. Indeed, to suggest anything else would be directly contrary to the strategy proposed in paragraph 4.3 of the submission draft as the emerging Local Plan would no longer meet affordable housing needs in full.
- 2.17. However, rather than seeking to modify the emerging Local Plan to address this substantial shortfall, proposed MMO88 suggests that:
- “The Council will continue to keep the affordable housing need and supply positions under review and will consider it as a potential trigger for a review of the Plan if supply does not keep pace with the requirement.”***
- 2.18. The examining Inspector has not requested that she has sight of this updated paper prior to the Main Modifications consultation but clearly even if she is aware of the extent of the proposed shortfall, she will need to receive representations from interested parties in order to conclude whether further modifications will be required to address this significant issue as alluded to in her Further Post-Hearings letter. These representations will now be submitted through the Main Modifications consultation.
- 2.19. As the Inspector has identified significant concerns with the way in which the need for affordable housing has previously been calculated in the context of considering the need to

⁶ Comprising a supply of 2,639 affordable homes arising from vacancies and the relet of existing affordable homes and a newly arising supply of 2,709 affordable homes in paragraph 4.7.



increase the housing requirement and identified that these go to the soundness of the emerging Local Plan, and owing to the fact that it is now demonstrably the case that there is a significantly greater need for affordable housing which has only just come to light, it would be expected that following consideration of representations the Inspector will require further modifications to the emerging Local Plan to better respond to this need in order to find the emerging Local Plan sound as suggested in paragraph 13 of her Further Post-Hearings Letter. It would be very surprising if the Inspector, having identified significant concerns with the way in which the need for affordable housing had been calculated as a matter of soundness, disregards the need for affordable housing now this has been calculated broadly in accordance with the guidance and identifies that the need is significantly greater.

- 2.20. Obviously, the need (or otherwise) to increase the housing requirement to meet the needs of 1,879 households in the greatest need will now have to be subject to meaningful consultation. Any such consultation must provide the opportunity for representations to be considered that may necessitate further modifications. This is especially the case where such a significant newly arising material consideration, which the Inspector has not previously had the opportunity to consider, has arisen.
- 2.21. It is correct to note that a Local Plan can be found sound without meeting the affordable housing needs in full where this would be unsustainable. However, there is no evidence that this would be the case in Fareham Borough. Given the extent of the shortfall of affordable housing proposed and the fact that the Council has previously identified suitable sites, including the appeal site, that provide a ready solution to better respond to this need, I would be very surprised if further modifications are not required in light of the representations to be submitted.
- 2.22. Ultimately, this falls to a matter of planning judgement for the examining Inspector, but the indications to date suggest that such further modifications will be required.

3. The materiality of this issue

- 3.1. The additional work requested by the examining Inspector has been completed and a schedule of main modifications prepared. In normal circumstances it would be expected that as such the weight afforded to the emerging Local Plan would have increased. However, the proposed modifications and the newly arising supporting evidence remain to be subject to consultation which could raise issues of soundness and could necessitate either further modifications or result in the emerging Local Plan being found unsound and so I would suggest that those elements of the emerging Local Plan that are either affected by newly arising evidence or are proposed to be subject to modification should not be afforded significant weight.
- 3.2. Insofar as the emerging housing requirement is concerned, owing to the Councils persistent and repeated refusal to assess the need for affordable housing in accordance with the PPG, a significant newly arising material consideration which will be material to the housing requirement and all of the policies that flow from this has come to light at the same time the proposed main modifications have been drafted. This has yet to be subject to any representations or consideration by the examining Inspector. This could and in my opinion is likely to result in a need for further modifications to numerous policies of the emerging Local Plan including to the housing requirement and additional allocations potentially including the appeal site. Accordingly, I consider that the emerging housing requirement should be

afforded no more than limited weight given that it has not yet been subject to any consultation in light of a significant newly arising material consideration.

3.3. Indeed, this accords with the *Rosconn Judgment*, in which the courts found that it was rational for an Inspector to afford limited weight to an emerging Local Plan that was more advanced than that in Fareham Borough⁷ and on which such a significant newly arising material consideration had now come to light, given amongst other things the need for meaningful consultation the outcome of which remained uncertain.

3.4. Nevertheless, even if the Inspector is minded to afford significant or greater weight to the emerging Local Plan this will not be particularly material to the current appeal owing to the fact that:

- a) The parties are agreed that the most important policies will remain out-of-date post-adoption in paragraphs 3.27, 3.29 and 3.30 of the SoCG.
- b) Whilst the Council are likely to be able to demonstrate a 5YLS post-adoption as a result of the proposed stepped housing requirement, the Council will be unable to demonstrate a sufficient supply of housing to meet the housing needs of Fareham within five-years. Therefore, there will remain a need for additional housing in the Borough to meet the minimum expectation of national policy.
- c) There will be an unmet need for c.13,000 homes to 2036 across the sub-region.
- d) There will be an unmet need for 1,879 affordable homes within the Borough over the plan period.

3.5. Therefore, even if the emerging Local Plan was adopted without further modification, the most important policies will remain out-of-date, the presumption in favour of sustainable development would continue to apply, and there would be a substantial need for housing and for affordable housing to be weighed in the planning balance.

3.6. Indeed, in light of the fact that the need for affordable housing is now demonstrably materially greater than suggested previously it would be expected that both parties would now afford greater weight to the provision of housing if this is considered on an aggregated basis, or greater weight to the provision of affordable housing if this is considered on a disaggregated basis.

⁷ Having progressed to a further main modifications consultation.

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

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