

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

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

**Closing Submissions on behalf of  
Fareham Borough Council**

(references to evidence are as follow: **cx** – examination in chief;  
**xx** – cross examination; **rx** – re-examination; **PoE** – Proof of Evidence)

**1. Introduction**

1. These closing submissions are made on behalf of the Council in respect of a non-determination appeal of an outline application for 375 dwellings, open space and associated development on land to the east of Newgate Lane East, Fareham. The appeal was heard between 11<sup>th</sup> and 19<sup>th</sup> October.
2. The structure of these submissions following this introduction is to address the framework for your determination, Inspector, including a discussion of the Council's spatial strategy for the area and how this would be impacted by the development. The impact of the scheme on the character and appearance of the area and the strategic gap will then be addressed, followed by the planning balance.
3. This appeal revolves at its heart around two competing considerations – the need for a plan led system of development and the need for housing - and how you determine the balance between the two, Inspector, will determine the appeal. You

will doubtless hear much from the Appellants later this morning on the importance of housing including affordable housing within Fareham and that this should be determinative of the appeal. It is submitted, however, as Mr Jupp expressed in his evidence, that in reality the Appellants' case is based at its core upon an assertion that housing should be provided at any cost.

4. To accept the Appellant's submissions and allow the appeal would ignore the reality which is that Fareham accepts and gives substantial weight to the provision of housing. The key to resolving how the need for housing fits into the plan led system is provided within Fareham by the Development Plan itself and policy DSP40. It is by the application of DSP40 that the need for housing, in circumstances where there is a five year housing land supply shortfall, is reconciled with the need to determine where that housing should go in a manner which respects the need for local determination. It is by the application of the criteria in the DSP40 that housing is directed into areas which reflect where it is the people of Fareham have determined it will do the least harm.
5. It is important to note three matters from the outset. Firstly certain matters are agreed between the parties following the evidence and these matters go to the core of what you need to decide:
  - i. Should this appeal be allowed the tipping point described within the Fareham Landscape Assessment (CDG20, p.153) would be reached, tipping the balance within character area 8.1a to a predominantly urban character (Atkin xx). The Appellants say this does not matter because any development of green field land will have a negative landscape impact, but this is to fundamentally misunderstand the context of this particular site, and both sides are agreed that the site specific context and specific characteristics (described within the FLA, CDG20 at the table on p.161) are essential in informing the level of harm any development will cause (Gardiner xx).
  - ii. The fact that this tipping point from an essentially rural character to a predominantly urban character would be triggered by this development has knock on impacts for the strategic gap. Although the site would not

(obviously) be directly removed from the gap, the consequence of the allowing the appeal would be to “indirectly remove it” from the gap (Atkin xx). It will be seen that this change in character from rural to urban as one travels along Newgate Lane East past the development site has fundamental consequences for whether area 8c can effectively continue to function as part of the Gap.

- iii. There is no material difference in the extent of LCA 8.1a and Strategic Gap area 8c (Gardiner xx), with the consequence that if the character of area 8.1a changes from rural to urban, the same can be said for area 8c.
  - iv. Although he was not prepared to say to what extent, Mr Gardiner did accept (xx) that developing the appeal scheme would have a “greater” impact on CA 8.1a than the 99 unit scheme to the south.
6. These concessions will be examined later in the relevant context, but they go to the core of the quantum of harm which would be caused by developing the appeal site.
7. Secondly, your task is made easier on this appeal by virtue of the fact that, in addition to the framework provided by the Development Plan itself, you have the benefit of a series of decisions of your fellow planning inspectors (in part down to the efforts of my learned friend and myself) which guide you on the application of that framework. Not only do these decisions span much of the borough of Fareham, but you have two addressing the same character area and strategic gap area within which the appeal site sits. It is possible to distil from these decisions how DSP40 should be interpreted and applied to the appeal site development.
8. Thirdly, you have the voice of the local community expressed through around 180 representations received on the application, along with the voice of the Fareham Society and Lee Residents at the appeal. I understand this community has been watching the appeal through the auspices of the Council’s YouTube channel.
9. Before addressing the issues in detail, it should be noted at the outset Inspector that the gravamen of the evidence at this inquiry has demonstrated that the proposed development is simply in the wrong place. In that regard the appeal should be dismissed. In short, the proposed development would comprise development of a

kind that policy DSP40 in substance seeks to prevent. In that regard it engages at a fundamental level with the purpose of DSP40. Policy DSP40 looks to ensure that, in circumstances where a five year supply of housing cannot be demonstrated, there is a controlled release of land through a plan-led approach in accordance with criteria which ensure that any development permitted will represent a logical extension of the settlement to which it is adjacent, is designed sensitively to reflect the character of the neighbouring settlement, and will therefore be able to minimise any harm to landscape character and the strategic gap. As we shall see this is simply not something that the development in this location can do.

10. The essence of this difficulty with the location of the proposed development is recognised throughout the sizeable body of objections raised by members of the public, Inspector. Examples include:

**Dame Caroline Dineage MP-**

*“This proposal threatens the strategic gap and I believe it is vital that we protect this land as a stretch of countryside that keeps communities distinct and prevents urban sprawl, whilst providing valuable green space to the local community.”*

**Councillor Steve Hammond (Bridgemary North Ward- Gosport)-**

*“It is located within the Strategic Gap, destroying a vital green which separates Gosport from Fareham”*

**The Fareham Society-**

*“The importance of the Strategic Gap in this area in preventing the coalescent of settlements has long been recognized. The Fareham Borough Gap Review 2012” (CDG1) “identified the Peel Common area as one of the most strategically important areas of gap. A report prepared for the Inspector on the Fareham Local Plan Part 2 said that “The Strategic gap between Fareham and Stubbington is vital to maintain the separate identities of the two settlements and new road improvements should not compromise this”. This view was endorsed by the Local Plan Inspector following his visit to the area.” (CDG4 para. 15)*

*“The Fareham Landscape Assessment 2017” (CDG20) “similarly saw the Peel Common area as planning a critical role of preventing the coalescence of urban areas and also acknowledge that the narrowness of the gap between development at Peel Common and the edge of Bridgemarky means that this area has a particular vital role in maintaining physical, visual and perceived separation.*

*“This view was endorsed in the Technical Review of Areas of Special Landscape Quality and Strategic Gaps 2020” (CDG6) “produced to inform the emerging Local Plan.”*

**Gosport Borough Council –**

*“The submitted FLP2037 retains the Strategic Gap in this location and therefore reinforces this Council’s objection to this proposal which is considered an unacceptable intrusion into the Strategic Gap. Whilst the FLP2037 is an emerging document, it is supported by a detailed evidence base which justifies retaining this Gap free from development. It is clear that the Strategic Gap should be retained in its current form and that the residential proposal for 375 dwellings are clearly contrary to the emerging and adopted Fareham Local Plan, by introducing inappropriate development to the Countryside and Strategic Gap”*

**Adrian Miles- Hambrook Lodge, 130 Newgate Lane-**

*“This development takes a large bite out of the strategic gap, a vital green lung between Gosport, Fareham and Stubbington, removing another open space from an already over-developed peninsular, and should be rejected purely on that basis”*

11. The Fareham Society and Lee Residents made further representations on the first day of the appeal, focussing on the impact on the Strategic Gap:

**Mr Marshall of the Fareham Society (ID6) –**

*“I would just add the vital role this gap, along with others, plays. It has over many years been essential in preventing the coalescence of settlements which, in this area of high development pressure, would have given rise to unsightly urban sprawl over much of the District. The Society is pleased to note the support given to these Gaps, and in particular the Gap in question in this case, in the various studies referred to in our letter. We would urge you give these considerations the greatest weight. In our view they clearly outweigh any advantages of the proposal in terms, for example of housing numbers, especially*

*given the advanced stage of the Local Plan. The harm to the Gap that would be caused by development of this scale and in the location would simply be too great.”*

**Mrs Alison Roast of the Lee Residents (ID5) –**

*“The unique views across the Alver Valley would be lost, as would a sense of transition between settlements (one of the most important elements that gives credibility to the notion of a settlement gap).*

*The proposed development would fail to protect the integrity of the Strategic Gap and will result in physical coalescence of Fareham and Gosport and lose any sense of countryside when passing along Newgate Lane, amounting to an unequivocal breach of Fareham Policy CS22”*

## 2. The Plan led system and the framework for determination of the Appeal

12. A central tenet of planning law is that development should come forward in a planned way. This means that where any development is to be located within a local authority area it should be the subject of local determination by way of the Development Plan process. This is reflected in the fact 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 at paragraphs 15-20 of NPPF 2019 which explain that strategic policies should set out a strategy for where sufficient housing should be located. As Mr Jupp explained in evidence (rx) DSP40 provides the framework addressing housing needs contemplated in paragraph 15.

13. This issue 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, 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.”*

(my emphasis)

14. So a core principle of the Framework is that planning for future development should be genuinely plan-led, providing a practical framework for local decision making within which decisions on planning applications can be made with a high degree of predictability and efficiency. Local Plans are the key to sustainable development. The clear aim of the plan-led system is to direct development to where it is needed.

15. In relation to Fareham these dicta loom large because it has a strategic vision, set out within the Development Plan Core Strategy policies CS2, 6 and 14, which directs where development should go, and a policy in DSP40 which enables you to reconcile the need to apply the titled balance to appeals where there is a shortfall in housing land supply with the need to ensure development is plan led.
16. In particular the Core Strategy contains strategic objectives SO1 and SO2 and to meet these policy CS14 is clear that

*“Built Development outside of defined settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Acceptable forms of development will include that essential for agriculture, forestry, horticulture and required infrastructure.”*

The supporting text notes at 5.146 that

*“The strategy concentrates development into the existing urban areas and strategic sites. To support this approach, development in the countryside, outside the settlement boundaries will be strictly controlled...”*

17. This development strategy is continued in the Local Plan Part 2. Under Chapter 3: existing settlements there is a section on “*Defined Urban Settlement Boundaries*” paragraph 3.7 of which provides that “*Development outside the DUSBs is generally subject to restrictive policies, which limit uses to those appropriate to these areas, such as purposes directly related to agriculture, forestry, horticulture or related infrastructure.*”
18. Policy DSP40 provides that permission for development outside of the defined development boundaries of settlements may only be granted where a proposal meets all of the criteria in (i)-(v). Of particular relevance for this appeal are the following requirements:

*“(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.”*

19. The supporting text provides at 5.163-4 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.”*

20. Mr Jupp explains in his evidence that in circumstances 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.

### ***Weight given to a breach of DSP40***

21. Mr Jupp explained that (cx and xx), where the Development Plan expressly addresses the manner in which such applications should be decided in circumstances where a five year supply cannot be demonstrated, Policy DSP40 should be given full weight and the fact that the proposal is in breach of policy DSP40 must be given very substantial weight in the planning balance. This is because the fact that policy DSP40 is 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 in *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37 (CD35) (“*Suffolk Coastal*”) 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.”*

22. Mr Gardiner accepted that the policy should be given a high degree of weight and that it should be overriding in the sense of overriding the more restrictive policies in the plan. He maintained (rx) that he didn't agree with it being given full weight and relied upon dicta of Inspector Jones (CDJ1 at para. 46) and (when prompted by my learned friend) Inspector Jenkins (CDJ7 at para.110) as providing support for the proposition that the balance DSP40 draws may be unduly restrictive. Inspector Jenkins gave breaches of DSP40(ii) and (iii) considerable but not full weight (Inspector Jones was not specific saying simply that the harm to the character and appearance, including the gap where he had found no breach of DSP40 in gap terms, should be afforded significant weight against the proposals). The basis for any reduction Inspector Jenkins made being the fact that the shortfall in the five year housing land supply still persisted and was higher than on previous appeals. The range before Inspector Jenkins was agreed to be between 0.97 and 3.4 years.
23. It follows, inspector, that the range of shortfall in previous appeals along with the determining Inspectors' findings on DSP40 require examination to determine whether you should give the policy “full and overriding weight” or some lesser quantum of overriding but not full weight such as considerable or significant.

Land East of Posbrook Lane (CDJ27) (April 2019)

24. Inspector Stone determined he had no need to conclude on the precise extent of the housing land supply shortfall (paragraph 52); the Appellant there had suggested a 3.08 year supply. He also determined that because of the lack of a five year housing land supply policies to protect the countryside such as CS14, 22 and DSP6 did not

have full weight rather they had significant weight. In respect of Policy DSP40, however, he concluded at Paragraph 68 that:

*“...The contingency of Policy DSP40 has been engaged by virtue of the lack of a five year housing land supply and it is for these very purposes that the policy was drafted in that way. On that basis the policy has full weight and any conflict with it is also of significant weight.”*

Land West of Old Street, Stubbington (CDJ28) (January 2019)

25. At paragraph 9 Inspector Downes noted that the Appellant suggested a housing land supply shortfall of 2.5 years, which was below that suggested by the Council, but she didn't think it necessary to determine the precise extent because the deficit was significant in either case. At paragraph 10 she noted that this rendered policies relating to supply of housing out of date. However, she also noted that policies relating to the protection of landscape character and separation of settlements were not set aside. The framework recognises the intrinsic beauty of the countryside and although strategic gaps are not specifically referred to it endorses the creation of high quality places which would include respecting the pattern and spatial separation of settlements. At paragraph 11 she found that:

*“Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing 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 would be a matter of the greatest weight.”*

Posbrook Lane (2022) (CDJ4) (February 2022)

26. As explained in his rebuttal evidence from paragraph 2.30 (page 10), Mr Jupp provided evidence at the 2<sup>nd</sup> Posbrook Lane inquiry. In particular he explained to that inspector how DSP40 has allowed a large number of sites to come forward with officer support, and he explained how many sites were coming forward on appeal. In that inquiry Inspector Rose concluded at paragraph 11 that:

*“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.”*

27. Three observations can be made on this conclusion: firstly DSP40 is the single most important policy for determining appeals where there is a housing land supply shortfall, secondly the operation of that policy renders the development plan substantively up-to-date (when one contemplates the guidance within the NPPF such as paragraph 15, in spite of policies being deemed out of date by operation of footnote 8), and thirdly that the consequence of these two factors is that the policy should be awarded not just overriding weight (in the sense that it “overrides” other policies), but that the policy as a whole (including therefore its criteria undifferentiated between (i)-(v)) should be afforded “full” weight.
28. The reality is that Mr Gardiner’s query about whether criterion (ii) and (iii) should be afforded less weight than others within the policy, relying as he does on the older decisions of Inspector Jenkins and Inspector Jones, cannot survive this analysis. However, there are further relevant decisions where Inspectors have taken the Inspector Rose approach.

Land to the East of Cartwright Drive (23 September 2022) (CDJ33) and Land east of North Wallington Road (21 September 2022) (CDJ32)

29. In the very recent appeal relating to Cartwright Drive last month (CDJ33) Inspector Holden noted (paragraph 9) that the Council were unable to demonstrate a five year

supply (and had also failed the HDT). By this time the shortfall range had moved such that the Appellant's figure was 4.33 years and the Council's just under 5 years (found to be owing to nutrient neutrality delaying some schemes and three schemes delivering fewer homes than anticipated) (paragraph 8). Inspector Holden dismissed the appeal concluding on DSP40 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 the settlement boundaries when there is a shortfall in the 5YHLS. For the site to be acceptable the policy requires it to meet all five criteria.”*

30. From paragraph 45 of the decision it is clear that Inspector Holden was specifically considering criterion (ii) and (iii) of DSP40 and has not modified the weight to be afforded to any breach of these criteria. From this decision also it is clear that there is no longer any basis to suggest that the balance struck by DSP40 in respect of any of its criteria is incorrectly drawn.
31. In the Land east of North Wallington Road decision (21st September this year), Inspector Pannell was considering the consequences, for an appeal concerning up to 29 dwellings, of the development being in breach of DSP40(ii) (paragraph 18). In that case the evidence was of a shortfall in supply of between 4.34 and 4.92 years and Inspector Holden dismissed the appeal as being in conflict with the Development Plan (paragraph 56). Again he did not consider that the DSP40 balance had been incorrectly drawn.

Evidence of permissions granted under DSP40 both by the Council and on appeal

32. For you on this appeal, Inspector, Mr Jupp has provided unchallenged evidence on the number of permissions granted through DSP40. That figure stands at 499 permitted by the Council, a further 350 permitted on appeal (East of Down End Road) with the sole issue (safe highway access) being negotiated through the appeal process and 778 allowed on appeal. To this figure of 1582 (I think this should actually be 1627 when 350 is added to 499 and 778), as he explained, one can add

a further 251 with a resolution to permit. This makes a total of 1831 (actually 1876). This is not indicative of a policy which is overly restrictive.

33. What is more remarkable is that policy DSP40 has achieved these results in extremely challenging circumstances where the Council has had to navigate not just COVID but the nitrate neutrality crisis which brought the grant of permissions to a virtual standstill from February 2019 until late 2020. The Council's Housing Delivery Action Plan (CDF7) explains that the grant of permissions in the reporting year 2019/20 dropped to just 73 as a result of this issue. At its highest in 2020 there were applications of 1400 homes which could not be processed until a solution could be found (paragraph 4.12 and Chart 2 illustrates). The Council's willingness to grant permissions using the tools available through the Development Plan policy DSP40 is also illustrated by Chart 2 – permissions jumped to 505 in 2020/21.
34. Since publication of the plan in June 2021 the housing land supply situation has continued to improve to the point where, in the two most recent appeals discussed above, the range was between 4.34 and 4.92 years. On the present appeal the range is similar (applying as it does to the same period) although the Appellants consider the lower end of the range is 3.86 years (CDL4 paragraph 3.20). This compares with a range at the time of the North and South Newgate Lane appeal (CDJ7) (8 June 2021) of between 0.97 and 3.4 years.

#### Conclusion on DSP40 and the titled balance

35. The Framework is a material planning consideration, but it does not and could not displace the primacy of the Development Plan. Paragraph 11 of the Framework (2019) provides at (d) in respect of decision taking that:

*“where there are no relevant development plan policies, or the policies which are the most important for determining the application are out-of-date (7), granting permission unless: ...*

*(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

36. However, as agreed by Mr Gardiner (xx), the fact that these policies are out of date does not prescribe the weight which should be attached to them and any conflict with them. The gravamen of your colleagues' decisions referred to above makes clear that policy DSP40 should be given full weight and that any conflict with it should be a matter of the greatest weight. This is Mr Jupp's view and although Mr Gardiner's view was that overriding, high but less than full weight, should be applied this is not consistent with the decisions discussed above. In particular none of the decisions from this year to consider the weight to be afforded to DSP40 suggest that the balance this policy draws is incorrect in relation to criterion (ii) and (iii). Although Inspector Jones and Inspector Jenkins opined that this may be the case in the beginning of 2021, those concerns do not survive the 2022 decisions following on from Mr Jupp's explanation of how the policy has successfully operated to allow permissions to come forward in acceptable cases which comply with the terms of the policy.
37. If there were any doubt, the two most recent decisions from last month, both of which applied the policy without questioning the balance which it affords in criterion (ii) and (iii), and both of which demonstrated a similar range of shortfall to that on this appeal, dispel it. The reality is that DSP40 has succeeded in bringing the authority to the brink of a 5 year housing land supply as it recovers from the nitrate neutrality crisis. It should be afforded full weight on this appeal, and given the balance it strikes between the need for housing and the need to deliver that housing in a plan led way any breach of its requirements must be a matter of the very greatest weight.

### 3. Landscape

38. Policy DSP40 requires both that a proposal is sensitively designed to reflect the character of the neighbouring settlement and that any adverse impact on the countryside is minimised.

#### Minimising Harm to the Countryside – the second part of DSP40(iii)

39. To assess whether the development proposal is able to demonstrate compliance with DSP40(iii), insofar as it requires adverse impact on the countryside to be minimised, one needs to first ascertain what the nature of the harm is to the particular character area within which it is suggested the development will sit (Gardiner xx). It is only once this has been done that one is able to consider whether it is possible to limit any adverse impact, having regard to “factors such as careful location, scale, disposition and landscape treatment” (the factors mentioned by Inspector Jenkins, CD7 paragraph 21). That is the first stage.
40. The second stage involves determining whether a development has been successful in minimising any adverse impact on the countryside. The decisions of your fellow inspectors indicate that to comply with the policy any impact must be limited. Should one be left with “significant” or “material” impact after the application of any relevant factors then there is a breach of the policy.

#### *The First Stage – the nature of the harm*

41. Policy DSP40 is concerned with directing development to appropriate locations, locations where it is possible to minimise the harm that will be caused to the receiving landscape. To judge whether the appeal site is within such a location involves assessing the characteristics of the relevant landscape character area with reference to the Fareham Landscape Assessment (CDG20).



42. Although (in xx) Mr Gardiner accepted the need to apply these criteria, in rx he attempted to qualify his evidence by drawing attention to two factors: the presence of the words “protect and enhance” on page 161 of the FLA, and the fact that Inspector Jenkins notes (CDJ7 paragraph 37) that it would be “*unrealistic to expect the open, predominantly agricultural and undeveloped character of area LCA 8.1a to be entirely protected as the FLA suggests*”.
43. In reality, of course, Inspector Jenkins has not suggested that the open, predominantly agricultural and undeveloped character should be “entirely” protected in circumstances where a supply of housing shortfall exists. It is the next sentence in paragraph 37 which is the significant one for your determination, Inspector: “*However, the proposals would cause significant harm in that regard*”. Inspector Jenkins does not invite the decision maker to disregard the FLA, indeed he notes higher up in the same paragraph:

*“Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid any adverse impact, I consider that they (the development criteria at page 161) are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised.”*

44. The fact that these criteria are central to the question of whether there would be an impact and whether it can be regarded as being minimised is demonstrated by how Inspector Jenkins has treated the FLA in coming to his decision. From paragraph 24 onward he considers the landscape impact of the North and South scheme. He summarises the sections of the FLA relevant to the applicable character area 8.1a. At paragraph 28 he notes that it retains a predominantly open, rural agricultural character. He also notes that tree belts along its boundaries give it a sense of enclosure and contribute to its aesthetic appeal.
45. At paragraph 29 he continues to consider the effect of the construction of Newgate Lane East and explains why it is that its construction has reduced the value of the character area to medium, but that the susceptibility of the area to change remains high. The reason he prefers the LVIA provided by Mr Dudley for the Council over

that of Mr Atkin for the Appellant, is because of the way they have analysed the impact of the new road on susceptibility. Indeed the difference in approach was also highlighted during the evidence before you Inspector where Mr Dudley's susceptibility methodology (Dudley xx and Atkin xx) was shown to encompass the difference between a landscape which has "*some potential to accommodate change which is in keeping with the positive aspects of local character*" (high), and a landscape which "*demonstrates some potential to accommodate change through appropriate mitigation*" (medium) (Ian Dudley Appendix 2 page 8). This neatly encompasses why character area 8.1a is of high susceptibility, consistent with the findings of Inspector Jenkins and the evidence of Mr Dudley: although it could accommodate change in keeping with its predominantly rural undeveloped character, development not in keeping with that character cannot be accommodated. To use the words of Inspector Jenkins (at paragraph 29) in substance the same as those of the FLA (at page 153) "*significant further development in addition to the road scheme would almost certainly have an overwhelmingly urbanising effect, potentially tipping the balance to a predominantly urban character.*" On this basis he found the sensitivity of the character area to be medium/ high consistent with Mr Dudley's evidence, and went on to consider that the development proposed in that case would be sufficient to "tip the balance towards a predominantly urban character" resulting in a moderate/ major adverse effect even after mitigation (paragraph 30).

46. So, from the above it is clear that Mr Gardiner's reservation as to the relevance of the development criteria in the FLA (given in rx) was not sound. Although the FLA shouldn't be applied so as to entirely protect the open, predominantly agricultural and undeveloped character of the area, the development criteria are of assistance in judging the extent of impact and whether it can be regarded as being minimised in accordance with policy DSP40. The fact that the essential characteristics of the character area are that it is open, agricultural and rural and, furthermore, that it is vulnerable to the type of development proposed was treated as being centrally relevant to the decision Inspector Jenkins ultimately arrived at. The wording "protect and conserve" is addressed in this analysis and the qualified approach Inspector Jenkins has taken to the criteria.

47. Finally, the Appellants say that the appeal proposal represents a different development; it wouldn't necessarily be harmful just because the development in the North and South appeal was harmful. They refer to two factors to substantiate this proposition: the suggested location for the North and South development in the egg shaped gap next to Peel Common in contrast to that of the present development next to Bridgemary, and the decision of Inspector Jones (CDJ1) in which permission was granted for the 99 unit affordable scheme to the south of the proposed development. However, these attempts to distinguish the proposed development from that considered by Inspector Jenkins do not stand up to scrutiny for two reasons.
48. Firstly, the harm which was not capable of being minimised in the North and South appeal was as a result of the development being sufficient to tip the balance towards a predominantly urban character in character area 8.1a. In xx Mr Atkin said the following:

*(DL) "If the tipping point is reached within paragraph 30 for that scheme given the quantum this scheme proposes the tipping point would also be reached wouldn't it"*

*(JA) "I think I sort of agree broadly, but just caveat to say it has a different context, the site here for Inspector Jenkins related to Peel Common, a ribbon development there were concerns about how the open space worked and how the development fronted the open space rather than Newgate Lane West. The current site is judged in the suburban sports field and suburban edge. I think the tipping point is probably further, because more weighed or not the right word sorry, it's a different tipping point because of Bridgemary and Fareham."*

*(DL) "If broadly the tipping point is reached the character of LLCA8.1a will be urban not rural won't it."*

*(JA) "I think a large part of it would be but that is where the LVIA and my evidence acknowledge the effect on landscape character"*

49. Mr Atkin broadly agreed that if the 75 unit scheme in the Newgate Lane South appeal would tip the balance from a rural to an urban character, the appeal development would have the same effect. He noted that a large part of the character area would be urban rather than rural in character were the development to go ahead.

He said that this is reflected in his LVIA, but his LVIA doesn't acknowledge the significance of that change from a rural to urban character discussed by Inspector Jenkins and reflected in the additional harm given to this factor by Mr Dudley. In any event, and whatever Mr Atkin meant by his comment, it is plain that the scale of development envisaged by the appeal scheme, in the context of the contained landscape of character area 8.1a, means that Mr Dudley's view (that the tipping point would be reached) would plainly be correct and represents the consequence of developing the appeal scheme.

50. Secondly, the Appellants' reliance on the decision of Inspector Jones in CDJ1 is misplaced. Mr Gardiner referred (rx) to Inspector Jenkins noting in his paragraph 37 that "Furthermore" the schemes he was considering had not been located east of Newgate Lane East next to existing urban areas. This is an additional point to his conclusion that the proposals would cause significant harm, and the effect which such a development might have is not assessed by him here. He does however, develop the point later in his decision (at paragraph 84) when considering the spatial development strategy and the gap where he concludes that the impact on the integrity of the gap "*would be greater than would be likely to be the case if the same scale of development were to be located to the east of Newgate Lane East, next to the existing urban settlement boundary and Peel Common were to remain a small isolated ribbon of development within the gap.*" From this it is clear that he is referring to development of the same scale as the North and South schemes (75 and 115 units respectively) and to development which would allow Peel Common to remain isolated. Arguably the 99 unit scheme was of the same scale as the North and South schemes, however the appeal scheme is for 375 units and is therefore of a wholly different scale. A scale which Mr Gardiner acknowledged (xx) would have a greater impact than the 99 unit scheme.

51. Mr Dudley explains what the practical consequences of this would be for Peel Common (PoE 3.15).

*"Peel Common would become part of the adjoining settlement and all sense of the Strategic Gap in this location would be lost."*

52. This, the scale of development proposed would have the effect of including Peel Common within a character area tipped from a predominantly rural to urban in character. It would no longer read as an isolated ribbon of development.
53. Inspector Jones considered the effect of the 99 unit scheme, and he concluded (at paragraph 29) that there would be adverse effects on the character and appearance of the area which would not be minimised, resulting in a breach of DSP40(iii) on landscape grounds. He noted the extent to which the site would extend into the countryside, particularly the northwest portion of the site where it would be most removed from the existing settlement boundary and most discernible when experienced from the North along Newgate Lane East. In those circumstances, the reality is that even a similar scale of development to the North and South schemes (the 99 unit scheme) resulted in a breach of DSP40(iii). Although Mr Gardiner argued that the appeal scheme would be bordered by the consented scheme, it would still extend northward at four times the scale of the 99 unit scheme and five times the scale of the 75 unit scheme which comprised the Southern site of the North and South appeal. A large portion of the entire character area would be developed, changing its character from rural to urban and thereby striking at the core of what is identified as being important to conserve within the character area. It being accepted that the appeal scheme has a greater impact than the 99 unit scheme, there must also be a breach of DSP40(iii) in this case.

*The Second Stage – the quantum of harm*

54. In reality the first and second stages overlap. As a consequence of the harm not being capable of being minimised as required by DSP40(iii) the harm caused remains significant or material. Where harm remains significant or material there is a breach of the policy.
55. Inspector Stone (*Posbrook* CDJ27) reasoned the breach of Policy DSP40 in relation to character harm as follows:
- Paragraph 26-7: although landscaping would ameliorate visual harm to some extent the landscape and visual effects would still be substantial and

harmful in the short to medium term and albeit this would reduce in the longer term, he would still view the adverse effect as significant;

- Paragraph 31: overall the development would result in material harm to the character and appearance of the area;
- Paragraph 68: The harm identified in relation to the landscape results in a conflict with the relevant criteria within DSP40 and for the reasons given in paragraph 31 this results in a conflict with that part of DSP40.

56. Similarly Inspector Downes (*Land West of Old Street, Stubbington* CDJ28) reasoned a breach of Policy DSP40 as follows:

- Paragraphs 23-4: there would be an overall significant and harmful effect on landscape character even after mitigation;
- Paragraph 28: there would be a moderate harmful effect on views reducing to moderate-minor over 15 years;
- Paragraph 29: this represented long term, permanent and adverse change;
- Paragraph 39: The harm she identified in relation to landscape resulted in a conflict with DSP40 because the proposal would fail to minimise any adverse impact on the countryside.

57. This approach has been followed in numerous appeal decisions:

- Burridge Road (CDJ5) paragraphs [11] and [33] “material harm” not “limited” by landscaping;
- Newgate (North and South) (CDJ7) [32] and [112] “significant harm” even after mitigation resulted in a breach of DSP40(iii);
- 84 Farnham Park Road (CDJ10) [17] and [19] “significant” landscape effects had not been minimised;
- Cartwright Drive (CDJ33) [21] appeal dismissed for “significant and harmful” effects resulting in a breach of DSP40(iii);
- Posbrook 2 [CDJ4] [25] and [114] adverse impact successfully minimised to “limited net harm”

58. As with the landscape harm, the harm to views is characterised by the wholesale change in the nature of each view from rural to urban, in circumstances where the

importance of open rural agricultural views is established in the FLA for character area 8.1a. Indeed the FLA notes (page 161 – left column, 10<sup>th</sup> line down) that “*it is difficult to integrate development without it being highly visible and potentially affecting the rural undeveloped character*” something which cannot be mitigated. For that reason, where they differ, Ian Dudley’s analysis of the quantum of harm to views, particularly those from users of Public Footpath 084/128/1(VP3) and those from the western edge of Bridgemaury (VP4 and 5), in respect of which he finds the development would have an adverse impact of major/ moderate adverse significance, should be preferred to that of Mr Atkin.

59. Finally, Mr Atkin relied upon the contained nature of the character area and views as rendering the harm acceptable, praying in aid page 8 of the FLA (CDJ20) which notes that “*some form of development can potentially be accommodated within most landscapes as long as it can be demonstrated that it would not have unacceptable impacts*”. However, he accepted (xx) that the way in which one measures acceptability is to use the criteria in the Guidelines on Visual Impact Assessment to combine the sensitivity of the receiving landscape with the magnitude of any impact. Both Inspector Jenkins and Inspector Jones found significant harm causing a breach of DSP40(iii) in spite of the contained nature of the landscape. Indeed Inspector Jenkins expressly addressed this in his paragraph 30 acknowledging that the impact would be contained to area 8.1a, but finding significant moderate to moderate/ major impact even after mitigation. Similarly, Mr Atkin was correct to note that development has been found acceptable in the form of HA54 and HA55, but he accepted (xx) that page 138 of the FLA notes that there is potential for some development in the location of the former, and that 60% of the latter comprised green infrastructure. Neither his acceptability point nor these other allocations assist you on this appeal, Inspector.
60. It follows that the development would result in significant landscape harm, not capable of being minimised for the purposes of DSP40(iii). It also follows that because of the location and scale of the development (factors highlighted as being of particular relevance by both Inspector Jenkins and Inspector Jones), the harm would be much greater than that caused by the development of the 99 unit scheme to the south (only ¼ of the size).

Sensitive Design – the first part of DSP40(iii)

61. GLVIA 3 (CDH4) requires an identification of both landscape and visual receptors. Landscape receptors consist of “*its specific aesthetic or perceptual qualities*” (3.21). Those receptors are then subjected to an assessment which involves determining their sensitivity (value x susceptibility to the type of change proposed) and combining this with the magnitude of change which the proposed development would bring to produce a significance of effect (Figure 5.1 page 71).
62. Mr Dudley has identified key aesthetic and perceptual qualities and assessed the sensitivity and magnitude of change on each to provide a significance of effect in respect of each. He has then combined these to provide a significance of effect for the site and the setting of the site. This enables you, Inspector, to isolate the effect on the settlement edge of Bridgemarky because Mr Dudley has assessed it as a separate receptor. It also provides transparency as to the effect of the proposed development on all the key aesthetic and perceptual qualities and the ability to see how these combine to look at the site and its setting. In contrast Mr Atkin has simply assessed the effects on the site and its immediate setting, and on its wider landscape setting (LLCA 8a).
63. A separate requirement of policy DSP40(iii) is the need to sensitively design a proposal to reflect the character of the neighbouring settlement. This first part of DSP40(iii) needs to be considered alongside CS17 as that policy requires all development to “*be respectful of the key characteristics of the area*”. This element of DSP40(iii) was considered to be determinative in the *Burridge Road* decision (CDJ5), in which Inspector Parker dismissed the appeal because the development would introduce “*a form of development which is discordant with the existing pattern of housing in Burridge Road*” (paragraph 11) with the result that the development was not “*respectful of the key characteristics of the area and sensitively designed to reflect the character of the neighbouring settlement*” as required by DSP40 read with CS17 (paragraph 12).



64. At paragraph 4.19-4.24 of his PoE Mr Dudley assesses the sensitivity (combining value and susceptibility) and magnitude of impact of the development on the settlement edge of Bridgemarky. He explains that the FLA (on page 156) recognises that the edge of Bridgemarky is clearly defined in the vicinity of the site as being set behind a strong belt of vegetation for the entire length of the site boundary. This provides a strong definition of the edge of the urban area and marks a clear distinction between town and country. He demonstrates the point by reference to his VP6 and 9. The development would entirely eliminate this characteristic in circumstances where the FLA at this location states that any new development should “*avoid any major incursion of the urban area into the countryside beyond existing well defined boundaries*”. He assessed the significant of impact as being major/ moderate on this receptor.
65. The consequence of Mr Dudley’s assessment means that his LVIA can be used to gauge the impact on Bridgemarky as opposed to simply assessing the impact on the character area as a whole. Mr Atkin has carried out no such assessment and Mr Gardiner accepted that in terms of the impact on the settlement edge of Bridgemarky the only landscape architect evidence you have, Inspector, is that of Mr Dudley. It follows that the best evidence demonstrates that the proposals would not respect the settlement Bridgemarky.

Well related to and well integrated with the settlement boundary

66. The use of the word “well” in respect of related and integrated indicates the degree that a proposed development site must be able to relate to the settlement boundary; the relationship must not be poor or neutral it must relate to a high standard and integrate to a high standard.
67. The consequence of Mr Dudley’s analysis above in relation to the relationship which the proposed development would have with Bridgemarky is also determinative of whether it would be well related to and well integrated with the settlement. This reflects the conclusions of Inspector Jones (CDJ1, paragraph 26):

*“However, I 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 outlines 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 with the neighbouring development in terms of Policy DSP40(ii).”*

68. Although the Appellant, through the oral evidence of Mr Gardiner (rx), suggested that the relationship which the proposed development would have with the settlement boundary may not breach this part of DSP40(ii) by virtue of the fact that the 99 unit scheme had been permitted below it, this analysis does not stand up. It fails to take into account Mr Dudley’s assessment of the relationship the development would have with Bridgemaury. The extension of development to the north, through a scheme which amounts to four times the quantum of development proposed in the 99 unit scheme, and which entirely eliminates the strong definition of the edge of the urban area which currently marks a clear distinction between town and country, means that the proposed development could not be said to be well related or well integrated with the settlement.
69. Although not amounting to a reason for refusal in and of itself, Mr Jupp also noted that the proposed development would not be well integrated with the settlement of Bridgemaury in a functional sense due to the lack of access points on the east boundary of the current settlement boundary (paragraphs 8.64-5 of his PoE and cx). A matter that counts against the development in the planning balance.

#### Conclusion on Landscape

70. For all of the above reasons, the development would cause significant and harmful impacts on landscape character and views which it would not and could not mitigate, it would fail to respect the character of the neighbouring settlement and would not be well related to it or well integrated with it. This puts the proposed development in substantive breach of policies DSP40(ii) and (iii). The magnitude of the breach being much greater in terms of its impact than that of the much smaller

99 unit scheme to the south. In particular the larger 375 unit scheme would tip the predominant character of the area from rural to urban in defiance of the development guidelines within the FLA (CDG20) and the conclusions of Inspector Jenkins in the North and South appeal. The tipping to an urban character also has consequences for the impact on the strategic gap discussed in the next section.

#### 4. Impact on the Strategic Gap

71. CS22 states that development will not be permitted where it “*significantly affects the integrity of the gap and the physical and visual separation of settlements*”. DSP40(iii) requires that any adverse impact on the Strategic Gap is minimised. The context of DSP40(iii) is set by DSP40(ii) which requires that development should be well related and integrated with the settlement boundary. The recent Technical Review (CDG6) is clear that this part of the gap plays a critical role and recommends strengthening the Gap in this location through Green Infrastructure rather than weakening it (page 99, paragraph 15 and page 109 paragraph 12).
72. The key difference between the parties on this issue became apparent in the evidence of Mr Atkin in which he emphasised that the “core priority areas of the gap” (LVIA paragraph 8.37) would not be affected by the development. His position was predicated upon the area of the gap to the west of Peel Common being of no value to the integrity of the gap because you could not see it from the east and vice versa. On that basis, having a large urban extension filling the appeal site and tipping the balance of the area from rural to urban was of no consequence to him.
73. The reality is that, as recognised by Inspector Jenkins (CDJ7 paragraph 80) the gap is not simply experienced by those traveling east to west and vice versa. The recent Review of the Gap (CDG6) contains a strategic gaps overview. At page 87 of the document key vehicle routes between settlements to “experience” the strategic gaps are identified. One of those key routes is the Newgate Lane East road between Fareham and Peel Common identified as route (v) “Newgate Lane East”.
74. This demonstrates that the appeal site is within an essential part of the gap which is particularly noted as allowing users of Newgate Lane East to experience a break between settlements as noted by those making representations on the appeal.
75. Inspector Jenkins assessed impact on the strategic gap by considering this key vehicular route. At paragraph 81 of his decision he describes how travellers leave behind the urban landscape of Fareham and HMS Collingwood and Speedfields

Park and travel to the edge of Stubbington, via Peel Common Roundabout. He explains how planting prevents the Wastewater Treatment Works from being seen and limits views of the low-profile solar farm to glimpses. He notes that from this route Peel Common is easily understood as comprising, for the most part a small, isolated ribbon of development within the gap between the larger settlements of Fareham, Stubbington and Gosport. He explains (at [82]) that in each case, the North and South proposals would involve substantial development to the east of Peel Common which:

*“would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemy and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemy would remain physically separate, the contribution of this area to the sense of separation provided by the strategic Gap would be greatly diminished.”*

76. Inspector Jenkins is here explaining that the entirety of the area between Fareham, Peel Common and Bridgemy (i.e. strategic gap area 8c) would be tipped to a suburban rather than a rural character should even the 75 unit South scheme go ahead. This happens as a result of the impact which that quantum of development would have on the experience of someone traveling along Newgate lane East. In xx of Mr Atkin I contrasted the analysis of Inspector Jenkins with his LVIA where he discusses the part of the gap between Peel Common and Bridgemy (part 8c) at paragraphs 8.35-7. Mr Atkin accepted that it was a fair categorisation of his view that this part of the gap between Peel Common and Bridgemy, not being a “core part” of the gap, should be omitted from the gap (reflecting his LVIA paragraph 8.36). I then asked him this:

*(DL) “You are asking the Inspector on this appeal to do what you think the technical review should have recommended, which is to take your site out of the strategic gap and essentially include it within the settlement”*

*(JA) “I am not sure I would be content to frame it in those words ... but what I am suggesting to the inspector... based on those conclusions... is that it does not really function as a gap”*

*(DL) “You are not asking him directly, but that would be the practical effect of allowing the appeal”*

*(JA) “I would probably agree with that”*

77. Given the size of the appeal site relative to the strategic gap area as a whole, and given the effect which the development would have urbanising its character, it is

submitted that should the appeal be allowed, as with the appeal on the North or South appeal site, this would prevent area 8c from functioning as an effective part of the gap.

78. Following this, Mr Atkin accepted that the evidence base did not describe a “core, priority” part of the gap, rather that was his term. He accepted that the Technical Review emphasised the need to strengthen not weaken this part of the gap.
79. In relation to the relative importance of this part of the gap (area 8c) as compared to the area to the west, which he described as a “core” area, I put to Mr Atkin the view of Inspector Jenkins on its value. His view, expressed at paragraph 82, was that, although the appeal proposals before him would not materially alter the experience of this west part of the gap along the B3334 Gosport Road between Peel Common and Marks Road:

*“the Appellants have estimated the distance between the two is as little as 560 metres and, in my view, the limited sense of separation it provides is likely to be eroded by the Stubbington Bypass, which is under construction there. The FLA recognises that the role played by the area between Peel Common and Bridgemary (area 8c) in preventing coalescence between Stubbington and Gosport is likely to become more significant as a result of developments along Gosport Road, such as the bypass.”*

80. Ultimately, Mr Atkin accepted that Inspector Jenkins’ view therefore was that far from being less important than a “core” area to the west, area 8c had been rendered more important by the construction of the Stubbington bypass. This is squarely at odds with his concept of area 8c not being an important area of the Gap worthy of protection.
81. It follows that, should the appeal site be granted permission tipping the balance of area 8c from rural to suburban, this would have just as harmful an impact on the Strategic Gap as developing the North or South site would have had. This is because the harm derives, as Inspector Jenkins explained, from the tipping of the balance of the area from rural to suburban. The 375 unit appeal scheme would have this effect, in fact given the quantum of development proposed it is obvious from either an examination of the maps provided at ID18 and ID19 or a drive down the Newgate

Lane East that the appeal scheme would have a far greater impact. That the 375 unit scheme would have a greater impact than the 99 unit scheme is accepted by Mr Gardiner (xx).

82. The Appellants rely upon paragraph 84 of Inspector Jenkins decision where he notes that the impact of the North and South Schemes would be greater than would be likely to be the case if the same scale of development were to be located to the east of Newgate Lane East and Peel Common were to remain a small, isolated ribbon of development. However, this paragraph does not avail them, because (as explained by Mr Dudley PoE 1.15) a 375 unit scheme is not of the same scale as either the North or South scheme. Furthermore, by virtue of the character of the area tipping to urban from rural, Peel Common would no longer read as a small, isolated ribbon of development to someone travelling along Newgate Lane East, a route identified as a “key experiential route through the Strategic Gap” (CDG6 page 87).
83. The emphasis on the need for any development to the east of Newgate Lane East to be of a similar scale to the North or South scheme (to ensure that the character area would remain rural in character and Peel Common remain an isolated settlement within that rural character area) is underscored by Inspector Jones’ treatment of the 99 unit scheme (CDJ1). At paragraphs 30-32 of his decision he analyses policies CS22, and DSP40 insofar as it relates to the Gap. Mr Gardiner (xx) accepted that Inspector Jones separates CS22 into two considerations: firstly whether development has a significant effect on the integrity of the Gap, and secondly whether development would reduce physical and visual separation. He interprets DSP40’s requirement to minimise any impact on the Gap as meaning that harm would be minimised if there would not be a significant effect on the integrity of the gap. This corresponds with the requirement to minimise equating to a requirement to avoid significant harm as discussed above in relation to landscape.
84. Inspector Jones concludes (at [31]) that the “*relatively modest size of the development proposed relative to the overall scale of the Strategic Gap*” as well as its location adjacent to the settlement boundary means that there would not be a significant effect on the integrity of the Gap. The consequence being that “*Peel Common would continue to be understood as mostly comprising a small, isolated*

*ribbon of development.*” The Appellants point to the use of the words “individually or cumulatively” within Inspector Jenkins’ decision as meaning that he considered the impact of the current appeal scheme alongside the 99 unit scheme even though it was not before him. Such an assertion is with respect a hopeless one, the words “individually or cumulatively” are plainly used because they appear in policy CS22 which the Inspector is applying.

85. As discussed above, the impact of the appeal scheme, at four times the size of the 99 unit scheme, would be very different from it. It is large rather than modest relative to the scale of the gap between settlements, and by virtue of area 8c tipping to an urban character, Peel Common would cease to be understood as a small, isolated ribbon of development within the Gap, rather it would become subsumed in the settlement and all sense of the Gap at this location would be lost. The practical effect of allowing the appeal would be to remove this area from the Gap with the consequent significant impact on the integrity of the Gap. It is this effect on the character area as a whole which renders the development comparable in its effect to that of the North or South appeal considered by Inspector Jenkins, rather than the 99 unit scheme considered by Inspector Jones.
86. The very fact that the development would tip the balance from a predominantly rural to predominantly urban character is inimical to the objects of the gap. The current construction of the Stubbington bypass and the impact that necessarily has on the part of the gap through which it runs to the west of Peel Common, serves to make those parts of the gap to the east, which are expressly referred to within the 2020 review, more valuable and thereby the impact of the proposed development more significant.
87. Although Mr Gardiner referred to allocations HA54 and HA55 as showing that development within the gap has been sanctioned, in xx he accepted that both of these areas are expressly contemplated within the Technical Review (CDG6) as places where development could be accommodated (see page 98, paragraph 8 equating to the location of HA54 and 9 to HA55). Although, Mr Atkin claimed that the development did not create a gap of less than the “rule of thumb” discussed on page 105 of the Technical Review, in fact Mr Dudley demonstrated that the gap to



the string of development dropping south from Fareham along old Newgate Lane would be reduced to somewhere in the region of 200 metres. But in any event the text at page 105 describes the minimum gaps of 300 and 350 metres as describing “*a minimum functioning gap, that is weak and at risk of being lost*” rather than something to aspire to.

### Conclusion on the Gap

88. Should the appeal be allowed, it would have the practical effect of removing area 8c from the strategic gap as a result of its tipping from a predominantly rural to suburban character. In that regard the appeal scheme has a significant impact on the integrity of the gap and is similar to the North and South schemes considered by Inspector Jenkins.

## **5. Housing, BMVAL and the eLP**

89. It is common ground that the weight to be given to housing, including affordable housing, on the appeal is substantial. It is of no consequence whether those benefits are considered individually or cumulatively, but the usual practice in decisions in Fareham has been to consider them together (see the table in Mr Tiley's PoE at page 47).
90. As Mr Jupp explains the appeal would result in the loss of some 10.8 ha of "good quality" Best and Most Versatile Agricultural Land. This is considerably more than the very small proportion of the site which would have been lost in the North and South appeal (paragraph 100), to which Inspector Jenkins gave limited weight. In the circumstances it is submitted that Mr Jupp is correct to afford it moderate weight in the overall planning balance.
91. The eLP is at an advanced stage of preparation and based upon the examining Inspector's post hearing letter of 5<sup>th</sup> September (CDF13) there are no unresolved objections to relevant policies. No concerns are raised in respect of the consistency of relevant policies. Accordingly, applying paragraph 48 of the NPPF Mr Jupp's view that significant weight should be attached to the eLP.
92. The sole remaining issue raised by the Appellants as potentially affecting the weight to be afforded to the eLP is that of affordable housing. In reality, any realistic analysis of the examining Inspector's post hearing letter of 5 September (CDF13), coupled with the letter written in response by Gayle Wootton, Head of Planning Strategy and Economic Development for Fareham Council (ID13), points to the conclusion that this will not result in a significant change to the housing requirement. Put simply, it is simply not credible that the Inspector would approve the stepped trajectory in the terms she does in paragraphs 7-8 of her letter, and then go on to address affordable housing in the way she does at paragraph 10-13 had she any substantive concerns about the housing requirement or other relevant policies. As pointed out at the round table should she take a different approach that would be contrary to the Procedural Guide for Local Plan Examinations at paragraphs 6.10-6.11.

93. Furthermore, as also explained by Mrs Wootton, (and as related in the affordable housing background paper (ID10)), Fareham is in the relatively unusual position whereby 50% of the affordable housing supply over the plan period has permission and 33% will be delivered by April 2026. As with Hart District Council (ID11, paragraph 42 of the Hart Local Plan Inspector's report) this affords it a high degree of certainty as to how much affordable housing will be delivered at least in the short term, and coupled with the other factors referred to at pages 22-23 of the background paper means that keeping the affordable housing position under review is the most appropriate way forward, as proposed in MM088.
94. Mr Tiley in the round table drew attention to the current need for affordable housing of 4,874. However, as Mrs Wootton explained this is a need which will be met by the existing supply and provisions in the eLP (paragraph 2.5 of her note at ID17). As with market housing the current need will not be met immediately, rather it will be met over the course of the plan. But as noted above, 50% of the supply over the plan period already has permission. The existing need is not a factor which has altered over the course of the summer and so could not affect the weight to be given to the plan. Although the calculation of the emerging need using the data sources within the PPG does increase in the Background paper, Mrs Wootton explained in the round table that the higher level of newly arising need has not been demonstrated across the past nine years nor in recent times of economic downturn, and there are several ways in which the supply of affordable homes may be higher than predicted (Background paper paragraphs 5.3 and 5.5).
95. It follows that the eLP is at an advanced stage and very unlikely to change beyond that set out in the MMs – what it does allow for is an early review if necessary. This points to it being appropriate for the eLP to be given significant weight as explained by Mr Jupp. That said neither party relies upon the eLP as introducing a new policy upon which it seeks to rely, rather both parties rely upon policy DSP40 which is agreed to be the most important policy for determining the appeal. Every decision within the CDJ bundle which has considered the eLP has given it limited weight (see for example Inspector Jenkins at [92]). In those circumstances whether or not the eLP is given limited or significant weight matters little.

## 6. Planning Balance

96. The planning balance carried out by Mr Jupp in his PoE of evidence provides the correct approach for you, Inspector, on these appeals.
97. In particular Mr Jupp has carried out his balance in accordance with the policy framework set out in section 2 above. He has correctly assessed the weight you should give to policy and in particular he has recognised that the proposed development is in fundamental conflict with the Development Plan and fails to comply with policy DSP40 which expressly deals with how an application such as this should be determined in circumstances where there is a five year supply shortfall. It is manifestly correct and consistent with the gravamen of decisions discussed above that DSP40 should be afforded full weight, and that very significant weight should be afforded to conflict with it.
98. As Mr Jupp explains, when this harm is considered it significantly and demonstrably outweighs the benefits, principally the weight afforded to additional housing, including affordable housing and related economic benefits.
99. Mr Gardiner, in his oral evidence, referred to section 38(6) and the possibility of a planning balance being undertaken resulting in a decision being taken other than in accordance with the Development Plan. In that regard it is pertinent to note that of all the appeals in the CDJ folder there are only two which have been allowed in the face of conflict with DSP40. The first is that of Inspector Jones in the 99 unit scheme (CDJ1). He found a much lower degree of harm than would be caused by the appeal scheme relating to a much smaller scheme and no harm to the integrity of the Strategic Gap. The second is the decision of Eversdown farm (CDJ9), but as Mr Jupp explained (rx) this was a most unusual case where Inspector Bale found (at paragraph 51) that the proposal “*would not actually harm the existing residential character of the area, nor the landscape and so would be sympathetic to local character, preserving local identity.*”

100. In reality, DSP40 is present in the plan to enable housing outside the settlement boundary, provided its criteria are met. It enables you, Inspector, to reconcile the need to apply the titled balance to appeals where there is a shortfall in housing land supply, with the core principle of the Framework that planning for future development should be genuinely plan-led. It provides a practical framework for local decision making within which decisions on planning applications can be made with a high degree of predictability and efficiency. It responds to the clear aim of the plan-led system to direct development to where it is needed.
101. In those circumstances it is not a credible submission to make that any balance would fall in favour of allowing the appeal, in circumstances where the proposed development would result in a substantive breach of DSP40 such that the practical effect of allowing the appeal would be to significantly affect the integrity of the Strategic Gap and change the predominant character of CA 8.1a. It should be the local community through the plan led system which determines such matters.
102. For the above reasons the appeal should be dismissed.

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21/10/22